

VIA EMAIL

December 30th, 2024

Legislative Reference Library
sonars@lrl.leg.mn

In the Matter of the Proposed Rules Relating to Waste Treated Seed; Revisor's ID Number 04806

Dear Legislative Reference Library:

The Minnesota Pollution Control Agency intends to adopt rules relating to Waste Treated Seed. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing in the December 31st, *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness at the same time that we are sending our Notice of Intent to Adopt Rules.

If you have any questions or concerns, please contact me at Daniel.gonzalez@state.mn.us/651-757-2267.

Sincerely,

Daniel Gonzalez
Rule Coordinator

Enclosure: Statement of Need and Reasonableness



STATEMENT OF NEED AND REASONABLENESS
In the Matter of Proposed Revisions of Minnesota
Rule Chapters 7035 and 7045; Revisor ID No. 04806

Resource Management Assistance Division and
Industrial Division

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <http://www.pca.state.mn.us/news/data/index.cfm?PN=1>.
2. View older rule records at: <https://www.revisor.mn.gov/rules/status/>
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Daniel Gonzalez, Rulemaking Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-582-8594; 1-800-657-3864; email daniel.gonzalez@state.mn.us; or use your preferred telecommunications relay service.
4. How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), Subi. (A).
5. How to read a sample Minnesota Rules citation: Minn. R. §, 7150.0205, Subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, Subi. (3), unit (b), subunit (i).

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Acronyms, abbreviations, and concepts

CFR – Code of Federal Regulations

EPA – United States Environmental Protection Agency

MDA – Minnesota Department of Agriculture

Minn. R. – Minnesota Rules

Minn. Stat. – Minnesota Statutes

MMB – Minnesota Management and Budget

MN – Minnesota

MPCA or Agency – Minnesota Pollution Control Agency

OSHA – U.S. Occupational Safety & Health Administration

PSEE – Pesticide Safety & Environmental Education Program

RCRA – Resource Conservation and Recovery Act of 1976

Revisor – Office of the Revisor of Statutes

§ – Section

SONAR – Statement of Need and Reasonableness

UofM Extension – University of Minnesota Extension

Introduction and overview

A. Introduction

The Minnesota Pollution Control Agency (MPCA or Agency) is proposing small, noncontroversial rules that provide for the safe and lawful disposal of waste treated seed. The rules will clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed. The MPCA has previously published some guidance regarding management of waste treated seed in MPCA fact sheet #w-hw4-51, first published in April 2022, and revised in December 2023; available on the MPCA's website at <https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>. See S-1.

This rulemaking is mandated by [Laws of Minnesota 2023, chapter 60, article 3, section 28](#).

The proposed amendments make minor changes to Minnesota Rules Chapters 7035 and 7045. The MPCA notified the stakeholders of the proposed changes and used their feedback in the drafting of the proposed rule.

B. Statement of general need

The MPCA refers to the proposed amendments in this Statement of Need and Reasonableness (SONAR) as mandated. The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

For this rulemaking, the MPCA has conducted all the requirements of the state Administrative Procedures Act, plus provided additional notification and opportunities for public review as described in section 2 of the SONAR. The MPCA has established the need for and reasonableness of the proposed amendments and does not expect that they will result in any requests for hearing or obstacle to approval by the Minnesota Office of Administrative Hearings.

C. Scope of the proposed amendments:

Two chapters of Minnesota rules are being affected by the proposed changes.

- 1) Chapter 7035 establishes the requirements applicable to the management of solid waste.
- 2) Chapter 7045 establishes the requirements applicable to the management of hazardous waste.

In each of these chapters, the MPCA is proposing changes prompted by mandate of the Legislature and by the need to integrate those changes into already-existing requirements.

1. Background

The amendments proposed in this rulemaking are prompted by a legislative mandate. Laws of Minnesota 2023, chapter 60, article 3, section 28, requires that the MPCA adopt rules providing for the safe and lawful disposal of waste treated seed. The rules must also clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed.

2. Public participation and stakeholder involvement

The MPCA has provided the required notifications to the public and the entities identified in statute.

On August 28, 2023, the MPCA published a Request for Comments (RFC) on planned rule amendments

to Minnesota Rules Chapter 7035. After determining that greater flexibility was needed in the structuring of possible amendments, the MPCA published a second RFC on December 26, 2023. Comments received in response to both RFCs were considered in the development of the proposed rule.

The notices were placed on the MPCA's Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments> and the Waste Treated Seed rule webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seed>.

At the time the amendments are proposed, the notifications required under Minn. Stat. ch. 14 will be provided. The MPCA intends to publish a Dual Notice in the State Register and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice.

The proposed revisions will affect a narrow range of stakeholders. The following lists the chapters affected by the proposed amendments:

- 1) Chapter 7035 establishes the requirements applicable to the management of solid waste.
- 2) Chapter 7045 establishes the requirements applicable to the management of hazardous waste.

The MPCA conducted the following activities to notify potentially interested parties of the rule project:

- 1) The MPCA first posted information about its intent to undertake rulemaking for the Waste Treated Seed Rule in its July 2023 rulemaking docket.
- 2) Thereafter, the MPCA maintained information regarding the proposed rule project on its rulemaking docket, published as MPCA publication #mm-rule1-00, available at <https://www.pca.state.mn.us/sites/default/files/mm-rule1-00.pdf>. The Agency maintains the docket on a monthly basis and it is available online.
- 3) On July 13, 2023, the MPCA sent an electronic notification to subscribers of the New Rules GovDelivery list, encouraging them to subscribe to the Waste Treated Seeds Rules list to receive notification.
- 4) The MPCA established a rule specific Waste Treated Seeds webpage. The new webpage was referenced in the electronic notification to subscribers of the New Rules GovDelivery list.
- 5) The MPCA sent electronic notice to the list of tribal contacts who have indicated an interest in rulemaking for the August 28, 2023, and December 26, 2023, Requests for Comments. The electronic notices were also sent to self-subscribers of the GovDelivery list established for this rulemaking. Comments received in response to both RFCs are available on the agency's rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>
- 6) As mandated by the session law, the Agency worked in consultation with the University of Minnesota (UMN) Extension and the Minnesota Department of Agriculture (MDA) in the development of this rule. To that end, the agency solicited and received the following assistance:
 - a) UMN: The UMN conducted outreach to approximately 6,138 subscribers to its Pesticide Safety and Environmental Education (PSEE) program, which includes commercial, non commercial, private, and structural pesticide applicators, and other professionals.
 - September 29, 2023: UMN emailed PSEE subscribers informing them that the August 28, 2023, RFC was open for comment through October 27, 2023. A link to the OAH eComments webpage along with instructions was included. The Agency's estimated notice of rule draft release was projected as 12/31/24.

- October 24, 2023: UMN sent an additional email to PSEE subscribers informing them that the August 28, 2023, RFC was open for comment through October 27, 2023. A link to the OAH eComments webpage along with instructions was included. The Agency's estimated notice of rule draft release was projected as 12/31/24.

b) MDA –

- On November 8, 2023, MDA provided the MPCA with email and contact lists for seed treatment applicators, companies and agricultural groups. MPCA sent an email informing 17 MDA contacts that MPCA was working in consultation with MDA and UMN on legislatively mandated rulemaking and provided a link to rule webpage, which contains a self-subscribe link within the webpage.
- On November 9, 2023, MPCA sent additional emails informing MDA contacts of MPCA working in consultation with MDA and UofM Extension on legislatively mandated rulemaking with a link to the rule webpage. An invitation to self-subscribe to receive future notices on the rulemaking was included in 4 separate emails with recipient totals of 1,170, 170, 501, and 500 respectively, with assumptions of overlapping contacts.
- On November 27, 2023, MDA included the notice in their Pesticide and Fertilizer Update Newsletter GovDelivery bulletin which has 2,728 recipients.
- An email notice for an upcoming second RFC was sent by the MPCA to 6 email lists from MDA with a total of 2,431 recipients. The message references the mandate directing rulemaking, a link to where comments submitted to the first RFC are posted, and link to rule webpage. A link to self-subscribe to receive future rule-related notices is also included. There were an additional 13 notices sent in print form.

The MPCA established a self-subscribing rule specific mailing list (https://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_524); and the Agency used the list to disseminate rule related information to interested and affected parties.

3. Statutory authority

The MPCA has the statutory authority listed below to propose changes.

Table 1. Statutory Authorities

Chapter – Title	Statutory authorities (Minn. Stat. §)
7035 – Solid Waste	116.07, subd. 2(b); 116.07, subd. 4(b);
7045 – Hazardous Waste	116.07, subd. 2(d); 116.07, subd. 4(g)
Waste Treated Seed – Prohibited disposal methods	115A.06, subd. 2
Waste Treated Seed	Laws of Minnesota 2023, ch. 60, art. 3, sec. 28

Chapter 7035

In addition to the general authority granted to the MPCA to alter rules for the conduct of the agency, there is specific authority to adopt rules for the management of Solid Waste, including classifying solid wastes and requirements for facilities at which those solid wastes are disposed. Specific statutory authority for the MPCA to adopt rules for the management of solid waste is found in Minn. Stat. § 116.07, subd. 2(b) and the amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

In addition to the section 116.07, subdivision 2, authority for adoption of solid waste standards, the MPCA also has additional statutory authority to adopt, amend, and rescind rules for the collection, transportation, storage, processing, and disposal of solid waste Minn. Stat. § 116.07, subd. 4(b), and the amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 4. Rules and standards.

(b) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 18C.215.

Chapter 7045

The statutory authority for the MPCA to adopt rules for the management of hazardous waste, including identifying which wastes are subject to or exempt from hazardous waste standards, is found in Minn. Stat. § 116.07, subd. 2(d). The amendments to Chapter 7045 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

In addition to the section 116.07, subdivision 2, authority for adoption of hazardous waste standards, the MPCA also has additional statutory authority to adopt, amend, and rescind rules for the management and identification of hazardous waste Minn. Stat. § 116.07, subd. 4(g), and the amendments to Chapter 7045 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 4. Rules and standards.

(g) Pursuant to chapter 14, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the Pollution Control Agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

Waste Treated Seed – Prohibited disposal methods

The statutory authority for the MPCA to adopt rules for prohibited disposal methods for waste treated seed is found in Minn. Stat. § 115A.06, subd.2.

Minn. Stat. § 115A.06 POWERS OF POLLUTION CONTROL AGENCY.

Subd. 2. Rules.

Unless otherwise provided, the commissioner shall promulgate rules in accordance with chapter 14 to govern the agency's activities and implement this chapter.

The statutory authority for the MPCA to adopt rules to implement provisions of chapter 115A, including the new waste treated seed prohibited disposal methods found in Minn. Stat. § 115A.993, is found in Minn. Stat. § 115A.06, subd. 2. The amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Waste Treated Seed

The statutory authority and mandate for the MPCA to adopt rules for waste treated seed is found in Laws of Minnesota 2023, ch. 60, art. 3, sec. 28.

Laws of Minnesota 2023, ch. 60, art. 3, sec. 28

Sec. 28 TREATED SEED WASTE DISPOSAL RULEMAKING.

The commissioner of the Pollution Control Agency, in consultation with the commissioner of agriculture and the University of Minnesota, must adopt rules under Minnesota Statutes, chapter 14, providing for the safe and lawful disposal of waste treated seed. The rules must clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed. Additional Department of Agriculture staff will not be hired until rulemaking is completed.

The statutory authority and mandate for the MPCA to adopt rules to provide for the safe and lawful disposal of waste treated seed is found in Laws of Minnesota 2023, ch. 60, art. 3, sec. 28. The amendments to Minn. R. chs. 7035 and 7045 are being promulgated under that authority and the other authorities listed here.

4. Reasonableness of the amendments

A. General reasonableness

The proposed amendments are generally reasonable for the reasons discussed in this section.

1.) Analysis of present requirements

In response to reports of environmental contamination in the state of Nebraska caused by mismanagement of waste treated seed and of resultant actions by the United States Environmental Protection Agency (EPA), the Nebraska Department of Environment and Energy (NDEE) and the Nebraska Department of Agriculture (NDA) in 2021 and 2022, the MPCA carefully reviewed the existing Minnesota Statute and Rule requirements that would apply to waste treated seed and assessed awareness among the potentially regulated community and regulators of those requirements. The MPCA determined that it would be helpful to treated seed manufacturers, dealers, end users, waste management providers, land disposal facility operators, and state and local government agencies alike to clarify and raise awareness of those existing requirements for waste treated seed. Therefore, after consulting with the MDA, the MPCA compiled and published an educational document, referred to by the MPCA as a “fact sheet,” summarizing the existing Minnesota requirements for management of waste treated seed. The MPCA originally published fact sheet #w-hw4-51, Treated Seeds, in March, 2022. This fact sheet was posted on and accessible through the MPCA’s publicly available website, and was provided to the MDA for distribution to treated seed manufacturers, dealers, and end users due to MDA’s connection with those stakeholders. The MPCA republished this fact sheet again in April, 2022, after making minor formatting and content revisions.

Following the passage of Laws of Minnesota 2023, chapter 60, which contained both the mandate for this rulemaking as well as several specific new requirements and restrictions for waste treated seed, the MPCA once again carefully reviewed the now-existing Minnesota Statute and Rule requirements that

would apply to waste treated seed. To raise awareness of these new requirements enacted by the Legislature as well as the previously existing requirements, the MPCA revised and republished MPCA fact sheet #w-hw4-51, Treated Seed, in December, 2023. The MPCA again provided the fact sheet to the MDA and also to the UMN for distribution to businesses and farmers handling treated seed.

1.) Comments to August 28, 2023, RFC

The MPCA received three comments in response to the August 28, 2023, RFC. In reviewing the comments, the MPCA noted that a hyperlink to the then-presently posted version of MPCA fact sheet #w-hw4-51, which was April 2022, was included in the RFC. The MPCA assumes that comments that did not specify the date of a fact sheet are referring to the April 2022 fact sheet instead of the December, 2023 fact sheet.

One comment, from associations for agricultural seed and crop protection products manufacturers, expressed support for rules effectively restating the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; April 2022.

Another comment, from multiple crop growers associations and farm groups, incorrectly referred to the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; April, 2022, as 'recommended management practices' rather than as the explanation of actual requirements, however stated that all the crop growers associations and farm groups represented by the commenter supported the waste treated seed management practices published by the MPCA in the fact sheet and encouraged members of the associations and groups to implement them. However, the commenter stated that the represented associations and group did not support rulemaking by the MPCA, believing it unnecessary. This comment also provided citations and reference to several EPA regulations and how the commenter believed they applied to treated seed and waste treated seed. The MPCA discusses these regulations and their applicability and inapplicability to waste treated seed in the Specific Reasonableness justifications for Chapter 7035.3700, subpart 4, item D; and subpart 5. In addition to this rulemaking, the MPCA took this comment into consideration during the revision of explanatory text in MPCA fact sheet #w-hw4-51; December, 2023.

The final comment, from two conservation groups, urged the MPCA to use this rulemaking to require waste treated seed to be regulated as hazardous waste, or at a minimum to require landfills that received waste treated seed to require leachate management standards. The groups also proposed requiring extended producer responsibility (EPR), also known as "product stewardship," where treated seed manufacturers would be required to receive unwanted waste treated seed from downstream handlers and properly manage it. Additionally, the commenters encouraged the MPCA to require state reporting of treated seed product sales by sellers and of treated seed use and waste treated seed disposal by end users. The groups requested the MPCA prohibit planting of treated seed for wildlife forage. The groups also expressed support for the restrictions on use of waste treated seed for ethanol production and disposal by burial summarized in MPCA fact sheet #w-hw4-51; April, 2022, though the groups mischaracterized the restriction language as a flat prohibition. Finally, the groups requested the MPCA clarify the existing allowance for on-farm disposal of solid wastes from farming operations and how it applies to waste treated seed.

The MPCA considered these comments in drafting the proposed rules. The MPCA considered that two of the commenters expressed support for the reasonability of all the summarized existing requirements in MPCA fact sheet #w-hw4-51; April, 2022, and the third commenter expressed support for one provision described in that fact sheet. The MPCA therefore concluded that the existing management requirements for waste treated seed as of August, 2023, as summarized in MPCA fact sheet #w-hw4-51; April, 2022, were supported by most commenters to the first RFC as necessary and reasonable, and at least one

requirement was supported by all the commenters. Two of the commenters supported rulemaking to promulgate the requirements in one clear rule, while the third commenter opposed rulemaking as unnecessary, even though the commenter supported the underlying requirements that the rulemaking would codify.

The comments collectively also affirmed the MPCA's prior belief in the need and reasonableness in this rulemaking of clarification of the interaction of the EPA's Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulations and MDA pesticide and MPCA solid waste and hazardous waste Statutes and Rules.

In reviewing the comments, the MPCA also recognized the limits of the specific authority of the instant rulemaking and existing MPCA statutory authority. Specifically, the MPCA affirmed that it is required to perform rulemaking by express legislative mandate, and the MPCA may not decline to adopt rules providing for the safe and lawful disposal of waste treated seed as one of the commenters suggested.

The MPCA also considered the comment recommending a requirement that all waste treated seed be regulated as hazardous waste. The MPCA determined that in order to encompass the concentrations and types of the various seed treatment products found in waste treated seed, and to regulate them consistently with similar contaminants with similar potential environmental effect, the MPCA would have to drastically enlarge the scope of regulated hazardous wastes in Minnesota. This would subject extremely large volumes of commercially-generated wastes to hazardous waste regulation, such as many industrial byproducts and commercial chemical packaging. The MPCA determined that such an expansion of the scope and stringency of the existing Hazardous Waste Rules would exponentially increase the volume of regulated hazardous waste generated in the state, with commensurate steep increase of the regulatory burden on Minnesota businesses. This approach would require additional rules outside the scope of the specific rulemaking mandate adopted by the Legislature in Laws of Minnesota, ch. 60, art. 3, sec. 28. While the MPCA has, and in this rulemaking also relies on, additional existing and continuing rulemaking authority beyond that specific authority, the MPCA determined that such authority is for amendment and modification of existing Minnesota Rules. The information provided by the commenter supported a showing of some indeterminate level of risk from exposure to certain wastes. However, it did not show that management of waste treated seed as proposed in this rulemaking, and that has for the most part already been regulated under disparate existing requirements, has resulted or would result in the high risk that would drive such a major regulatory shift.

Also determined to be beyond the authorized scope of this rulemaking were suggestions that the MPCA mandate reporting of treated seed product sales and use or limit areas where treated seed products may be planted. Except where explicitly authorized by the Legislature, the MPCA's authority in this sector is limited to regulation of products that will not be used for their intended purpose; which are then wastes. As the intended purpose of treated seed products is planting to grow live plants, the MPCA does not currently understand its authority to extend to reporting of sales or use of treated seed or where treated seed may be planted for desired growth. Therefore, these requests also are understood to be outside the authorized scope of this rulemaking.

In sum, the MPCA believes the comments received to the first RFC generally support the need and reasonableness of the MPCA's rules as proposed.

1) Comments to December 26, 2023 RFC

The MPCA received 11 comments in response to the December 26, 2023, RFC. Similar to the first RFC, the MPCA notes that a hyperlink to the then-presently posted version of MPCA fact sheet #w-hw4-51, which was the revised December 2023, version, was included in the RFC. The MPCA will therefore

assume that all references in these comments to the MPCA's fact sheet are to this December 2023, version, unless otherwise specified in a comment.

Of the 11 comments received, seven of the commenters explicitly supported rulemaking by the MPCA for management of waste treated seed, and an additional commenter stated its support for one of the seven comments' organization and its respective stance, but did not directly support the rulemaking itself. Of the remaining three comments, two comments did not state an explicit support for MPCA rulemaking, but did request the MPCA to implement specific requirements for waste treated seed, which the MPCA interprets to be an inferred support of MPCA rulemaking for management of waste treated seed. The final comment requested codification of a specific requirement less stringent than the existing Rule and statutory requirements as summarized in MPCA fact sheet #w-sw4-51; December 2023. As the only method for the MPCA to make this change would be rulemaking, the MPCA also considers this comment as supportive of MPCA rulemaking for management of waste treated seed. Therefore, the MPCA believes the comments received to the second RFC generally support the need for MPCA rulemaking.

One commenter, who had previously submitted a comment to the first RFC, reiterated their prior comment that expressed strong support for rules effectively restating the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; however it was unclear to which version of the fact sheet this second comment referred. The commenter additionally discouraged any designation of waste treated seed as hazardous waste, however apparently incorrectly believed that hazardous waste definitions and determinations are bound solely by federal statutes and regulations. Though the MPCA is not in this rulemaking categorically designating waste treated seed as hazardous waste, and indeed is making no change to the definitions of hazardous waste in Minnesota that would increase its potential to be characterized as hazardous waste, the MPCA believes it important to clarify that hazardous wastes in Minnesota are defined and regulated under Minnesota Rules promulgated under the authority of Minnesota Statutes, and are not dependent on the federal definition of hazardous waste. Indeed, the federal law underlying the federal hazardous waste regulations, RCRA, explicitly allows states to implement hazardous waste regulatory programs that are both broader in scope and more stringent than the minimum federal regulations. Thus, it would not be "inconsistent with federal law," as asserted, for the MPCA to designate specific wastes as regulated hazardous waste under Minnesota-specific definitions, if the MPCA determines that to do so would best meet the intent of the Minnesota statutes requiring the MPCA to adopt standards for the identification and management of hazardous waste.

Conversely, two commenters requested that the MPCA categorically designate waste treated seed as hazardous waste, which a third commenter supported. The MPCA reviewed the substance of this request in the review of comments to the August 28, 2023, RFC, in 2) above.

Three comments explicitly stated support for a complete ban on use of waste treated seed for ethanol products, and two further requested application of a parallel ban on use of waste treated seed for any food, feed, or oil use.

As previously discussed in review of the comments to the August 28, 2023, RFC, the MPCA again recognized the limits of the specific authority of this rulemaking and existing MPCA statutory authority. Again, determined to be beyond the authorized scope of this rulemaking were three requests that the MPCA mandate reporting of treated seed product sales and use or limit areas where treated seed products may be planted, for the same reasons discussed in 2) above. Similarly, three comments asked the MPCA to impose extended producer responsibility (EPR), also commonly known as “product stewardship” requirements, on treated seed manufacturers or dealers to fund or directly collect and manage waste treated seed. The MPCA determined that these requested measures are beyond the narrow-authorized scope of this rulemaking.

Existing law also controls the allowance for on-farm disposal of solid waste to which two commenters objected. Waste treated seed would likely be considered “solid waste generated from the [...] farming operation” and must be allowed to be disposed on the farm site under Minnesota statutory law that the MPCA may not ignore.

One comment urged the MPCA to designate waste treated seed as a “restricted material”; however that designation is an action under California state law that is inapplicable in Minnesota and therefore cannot be considered by the MPCA in this rulemaking. This commenter also recommended that the legal definition of pesticides in Minnesota be expanded to include treated seed products, however that is the sole province of the Legislature and therefore also cannot be considered by the MPCA in this rulemaking.

One commenter effectively requested that the MPCA either designate waste treated seed as a minimally-regulated “biomass” suitable for incineration in facilities that currently burn trees, brush, and uncontaminated plant wastes like cornstalks, oat hulls, and grain byproducts, or alternatively allow such facilities to incinerate industrial solid wastes without the stringent waste composition and air emissions monitoring normally required of facilities that burn industrial solid wastes. The commenter incorrectly claimed that the MPCA had already authorized one such biomass-burning facility to incinerate waste treated seed. Any waste that is burned produces both airborne emissions, including vaporized constituents of the waste that is being burned as well as new chemicals created by combustion reactions, as well as residual ash that includes both unburned constituents of the waste as well as other new chemicals created by the combustion reactions. “Biomass”-type wastes, such as timber, brush, and uncontaminated plant wastes, when burned produce airborne emissions and ash that are well understood and present environmental risks relatively lower than incineration of other wastes such as industrial solid wastes and mixed municipal solid wastes. A wood “campfire” is a familiar example of biomass burning. Another familiar example are “corn stoves” which burn clean, harvested field corn. The permits issued by the MPCA for commercial burning of biomass address the resulting emissions and ash with simple testing, monitoring, and management requirements that are environmentally protective, but commensurate to the minimal risks presented by the biomass burning. Conversely, facilities that incinerate industrial solid wastes, such as waste treated seed, and mixed municipal solid waste, such as waste treated seed packaging, must obtain permits from the MPCA that mandate substantially more stringent testing, monitoring, and management requirements that also cover a much broader range of potential emissions to ensure sufficient environmental protection and protection of the public.

Waste treated seed, by definition, has been treated with, and contains, concentrated toxic pesticides and other chemicals. Waste treated seed is thus very different from “clean” wood, plants, and uncontaminated plant wastes, such as oat hulls. The MPCA does not believe it appropriate for the reasons discussed to consider waste treated seed to be a “biomass” that could be burned in a wide variety of facilities with relatively low oversight. Nor does the MPCA believe it protective of Minnesota’s

environment to allow permitted biomass burning facilities to accept industrial solid wastes that contain toxic pesticides such as waste treated seed. Therefore, the MPCA declined to implement this commenter's request. The MPCA determined that the biomass-burning facility referenced in the comment had not been authorized to burn waste treated seed. Separate from this rulemaking, the MPCA will ensure that the facility correctly understands its authorized biomass fuels and the complete process for authorization of new biomass fuels.

Finally, several commenters declared that it was important for the rules promulgated under this rulemaking be strong, rigorous, and protective, and that the MPCA be afforded the authority to implement and enforce those rules. Another commenter expressed concern that action by the MPCA not be unnecessary or impose additional burdens on farmers already subject to market forces. The MPCA's intent in this rulemaking is to ensure equitable, reasonable, and environmentally protective rules that can be fairly and consistently applied to best serve the citizens of Minnesota.

Balancing the comments received to the second RFC, the MPCA believes that as a whole they generally support the need and reasonableness of the MPCA's rules as proposed.

B. Specific Reasonableness

MPCA will discuss the specific reasonableness of each change below for Chapters 7035 (Solid Waste) and 7045 (Hazardous Waste).

1) Part 7035.0300

Justification for Minn. R. 7035.0300, Subp. 1

A reference to the new proposed part 7035.3700 is added. Because the new proposed part is outside the existing range of applicability of the solid waste definitions in part 7035.0300, this addition is necessary to preclude the otherwise necessary duplication of definition of all the relevant terms in the new part itself. This addition is needed and reasonable for this reason.

Justification for Minn. R. 7035.0300, Subp. 3a

A new definition of "agricultural products" is added to this chapter. This definition is necessary to support the new definition of "farming" in Subpart 37a of this Part. This definition is a reasonable meaning for this term as it includes all products commonly understood to be produced through farming, such as livestock, poultry, grains, and vegetables and fruit, but excludes products commonly considered outside the meaning of farming, such as lumbering and animal boarding with no pasture. [See Minn. Stat. 273.13, Subd. 23, Para. (i)]

Justification for Minn. R. 7035.0300, Subp. 17

The definition of "community water supply" is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988 and cross-referenced the MDH definition of this term. However, in 1991, MDH repealed this definition and replaced it at another location with an adoption of federal definitions at 40 CFR 141. Following, MDH promulgated a new term in 2008, "community water system" that took the place of the former term "community water supply" and extended and revised the original term definition, but placed it in Chapter 4725, a related chapter to the original Chapter 4720. Though the term "community water supply" is not referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking, the closely related term "public water supply" is, and shares a parallel need for correcting and updating from parallel MDH cross-references. Because the two terms are so closely related, and both currently have non-functional cross-references to parallel MDH definitions, it is reasonable to correct and update this term for MPCA's purposes in this chapter. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However,

because the term “community water supply” is used multiple times in this chapter, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 78; 15 SR 1842; and 33 SR 211]

Justification for Minn. R. 7035.0300, Subp. 37a

A new definition of “farming” is added to this chapter. This definition is necessary to correctly identify persons who own or operate land used for farming, who may be exempted from the prohibitions on burial of waste treated seed proposed in the new part 7037.3700, Subp. 4, Item A, Subi. (3). Minn. Stat. § 17.135, (a), conditionally exempts persons who own or operate land used for farming from state agency permitting of burial of solid waste generated from the person’s household or farming operation.

The MPCA believes that the definition of “farming” found in Minn. Stat. § 500.24, Subd. 2, (a), is instructive to this necessary definition. At the time of passage of Minn. Stat. § 17.135 in 1989, the definition contained in Minn. Stat. § 500.24, Subd. 2, (a), first established in 1973, was the only existing statutory definition for the term “farming.” That definition has twice been revised by the legislature, most recently in 1997, demonstrating the utility and currency of the MPCA’s reliance. The definition follows the generally understood meaning of the term “farming” as relating to plants grown in the soil for food and animal use, and animals raised on the soil or in water for food use. Similarly, the Merriam-Webster Dictionary defines “farming” as “...the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products; and the cultivation of aquatic organisms especially for food...”, and the American Heritage Dictionary defines “farming” as “...to cultivate or produce a crop on...”

The proposed definition defines “farming” as the production of agricultural products. A proposed definition of agricultural products is included in new subpart 3a of this same part. Though Minn. Stat. § 500.24 also then adds other included categories, the MPCA believes that these areas are already sufficiently addressed in the proposed definition of agricultural products, and are not necessary to differentiate in this rulemaking.

The proposed definition excludes the processing, refining, packaging, or transportation of agricultural products. This exclusion, mirrored in Minn. Stat. § 500.24, is reasonable as these activities are not unique to farming or the location where farming occurs, and often are performed in locations not associated with farming, such as processing plants in industrial areas. These excluded activities have more in common with manufacturing techniques and practices than with the common meaning of farming.

The proposed definition also excludes the provision of spraying or harvesting services. This exclusion, also mirrored in Minn. Stat. 500.24, is reasonable as these activities are often performed by persons not related to the farming operation and are a supportive service rather than the primary farming activity, similar to provision of other services supportive of farming, such as ditch excavation and maintenance, surveying, soil analysis, and farming equipment maintenance. People performing these services, while vitally supporting farming operations, would not commonly be understood to be farming themselves. [See 1989 Session Law, Ch. 131, Sec. 2; 1973 Session Law, Ch. 427, Sec. 1]

Justification for Minn. R. 7035.0300, Subp. 66

The definition of “monitoring well” is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988 and cross-referenced the MDH definition of this term. The MDH relocated its definition of this term in 1990, and then again in 1993. Finally, in 2008, the MDH repealed its own rule definition of this term and replaced it with a cross-

reference to a statutory definition at Minn. Stat. § 1031.005, Subd. 14, which was itself then repealed by the Legislature in 2017 and replaced with a new term, “environmental well,” which took the place of the former term “monitoring well” but also limited the scope of the new term to excavations of more than 15 feet in depth. Because the MPCA is aware of monitoring wells less than 15 feet in depth currently in operation at solid waste facilities regulated by the MPCA and believes consistent regulation of all monitoring wells irrespective of depth is appropriate. The MPCA adopts the meaning of this new statutory term, but modifies the meaning of “environmental well” to apply to excavations of any depth, not just those greater than 15 feet.

Though the term “monitoring well” is not referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking, the related term “public water supply” is, and shares a parallel need for correcting and updating from parallel MDH cross-references. Because the two terms are related, and both currently have non-functional cross-references to parallel MDH definitions, it is reasonable to correct and update this term for MPCA’s purposes in this chapter. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However, because the term “monitoring well” is used multiple times in this chapter and in parallel in Chapter 7045, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 78; 17 SR 2773; 33 SR 211; and 2017 Session Law, 1st Special, Ch. 6, Art. 10, Secs. 3 & 148]

Justification for Minn. R. 7035.0300, Subp. 86

The definition of “public water supply” is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988, and cross-referenced the MDH definition of this term. However, in 1991, MDH repealed this definition and replaced it at another location with an adoption of federal definitions at 40 CFR 141. Following, in 1993, the MDH redefined the term in Chapter 4725. Finally, MDH promulgated a new term in 2008, “public water system” that took the place of the former term “public water supply.” The term “public water supply” is referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However, because the term “public water supply” is used multiple times in this chapter, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 1842; and 33 SR 211]

Justification for Minn. R. 7035.0300, Subp. 98a

A new definition of “shoreland” is added to this chapter. This term is used three times in this chapter, but is not directly defined within Chapter 7035. Minn. R. 7035.2555, Subp. 2, Item A, references Minn. Rules Chapter 6120, where the term is defined at Minn. R. 6120.2500, Subp. 15. Minn. R. 7035.0300, Subp. 99a, references Minn. R. 7035.2555 and therefore also references Chapter 6120. Minn. R. 7035.2825, Subp. 2, does not reference Chapter 6120 by the text of the rule, however the use of the term in the context in this part, as well as the context when it is discussed in the relevant Statement of Need and Reasonableness for Minn. R. 7035.2825, clearly indicate that the intended meaning is the same.

Explicitly defining “shoreland” to have the meaning in Minn. R. 6120.2500, Subp. 15, will not change the intended meaning of the two existing uses of the term in this chapter already associated with Chapter 6120. However, defining this term will bring certainty to the remaining use, already reasonably read in

context and by intent to have the same meaning. The use of the term shoreland in the proposed Minn. R. 7035.3700, Subp. 4 is similar to the other instances of the term in Chapter 7035. Explicitly defining this term will result in clearer direction to waste treated seed handlers and promote consistency within the Chapter. Therefore, it is reasonable and necessary to adopt this definition. [See SONAR 13 SR 1150, February 23, 1988; Minn. Stat. § 103F.205; and Minn. R. 6120.2500]

Justification for Minn. R. 7035.0300, Subp. 105a

The MPCA revises the definition of “source-separated organic material” to exclude waste treated seed. The function of this definition is to identify organic wastes that are suitable for management by composting. The intended use of compost is to replenish, enrich, or add nutrients or beneficial characteristics to soil to support plant growth, usually agricultural or horticultural plantings. During the composting process, components of the composted materials that do not or will not readily biodegrade will be either concentrated into the finished compost or will be released into the environment. The majority of seed treatments borne by waste treated seed are pesticides, fungicides, or herbicides; substances intentionally designed to harm animal or plant life. When concentrated and applied in compost, or released during the composting process, all of these substances present a risk of endangering humans, food, livestock, fish, or wildlife. Such a result is contradictory to the Legislature’s explicit prohibition in Laws of Minnesota 2023, Ch. 60, Art. 9, Sec. 2, which prohibits use, handling, or disposition of waste treated seed in a manner that “...endangers humans, food, livestock, fish, or wildlife; or will cause unreasonable adverse effects on the environment....” It is therefore reasonable to exclude waste treated seed from the definition of source-separated organic materials suitable for management by composting.

Justification for Minn. R. 7035.0300, Subp. 108a

A new definition for “surface water” and “surface waters” is added to this chapter. These terms are currently used 110 times within the text and headings of this chapter, and are referenced by the Legislature in the mandate for the new provisions affecting waste treated seed proposed in this rulemaking, but have not previously been explicitly defined. Examined in context, each of these uses is consistent with the MPCA’s own general definition found in chapter 7050. Reliance by the MPCA on this general definition is consistent across many MPCA regulatory programs. Explicitly defining “surface water” and “surface waters” to have the meaning in part 7050.0130, subpart 6, will not change the intended meaning any existing use of the terms in this chapter, but will improve clarity and provide certainty of the intended meaning to these uses as well as to the newly proposed use. Therefore, it is reasonable and necessary to adopt this definition.

Justification for Minn. R. 7035.0300, Subp. 111e

The MPCA adds a definition of “treated seed” to this chapter. It is necessary to add this term to enable accurate reference to wastes potentially related to waste treated seed, such as packaging from treated seed, and to treated seed used for appropriate use and therefore not becoming waste treated seed.

The proposed definition is parallel to the definition of “waste treated seed” established by the Legislature in Laws of Minnesota 2023, ch. 60, Art. 3, Sec. 7, at Minn. Stat. § 115A.03, Subd. 37a, in that both definitions refer to seed that is treated, as defined in Minn. Stat. § 21.81, Subd. 28. It is reasonable for the MPCA to utilize the same definition root as the Legislature for the same purpose.

Justification for Minn. R. 7035.0300, Subp. 116a

A definition of “waste treated seed” is added. This definition is critical to the intended functioning of this entire rulemaking. Addition of this definition is therefore necessary and reasonable. The proposed definition is divided into three sentences, each supporting the final intended and functional meaning.

The first sentence of this definition adopts by reference the definition established by the Legislature in Laws of Minnesota 2023, ch. 60, Art. 3, Sec. 7.

The second sentence clarifies the scope of treated seed that is waste treated seed. The intended purpose of seed is to grow a live plant. Treated seed container label planting directions are, among other purposes, reasonably intended to maximize the seed's potential to grow properly. That is the reason that considerable time, effort, and expense is invested in developing, obtaining approval for, marketing, and applying treatments to seeds. Treated seed that is not planted for the purpose of growing live plants is not being used for its intended purpose, and is effectively discarded and a waste under the scope of materials intended by the Legislature to require regulation under this mandated rulemaking.

The third sentence clarifies that it is the intended purpose of planting that controls determination whether treated seed is a waste treated seed. Seed planted with all appropriate intention may still not germinate or grow properly for many reasons, thus the eventual growth or lack of growth of viable plants from seed does not automatically render treated seed from which live plants do not grow to be waste treated seed. Relatedly, placement of seeds in the ground is not necessarily planting, if not performed with a reasonable intent that live plants will grow or are likely to grow. Treated seed container label planting directions are, among other purposes, reasonably intended to maximize the seed's potential to grow properly. If the treated seed label directions for appropriate planting are not followed for such factors as temperature, depth, moisture, and other agronomic factors, the seed is reasonably not being planted as intended. Such placement would effectively be burial and thus disposal, rendering treated seed not planted for the purpose of growing live plants or not in accordance with the label directions as waste treated seed.

Additionally, Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, requires that treated seed label directions regarding disposal prohibitions be complied with. It is reasonable that this label compliance expectation apply to planting directions on the label as well.

Justification for Minn. R. 7035.0300, Subp. 117a

A new definition of "water-supply well" is added. This term is used two times in Chapter 7035 currently, and is used in the new provisions affecting waste treated seed proposed in this rulemaking, but has not previously been explicitly defined. Currently this term is found in Minn. R. 7035.2815, Subp. 3, Item E, (5); and Subp. 10, Item B, Subi. (3); and is proposed in Minn. R. 7035.3700, Subp. 4, Item A, Subi. (3), (a). Examined in context, each of these uses is consistent with the MDH's definition of this term in Chapters 4725, already referenced previously by other closely related definitions in this rulemaking for the same reasons. Explicitly defining "water-supply well" to have the meaning in Minn. R. 4725.0100, Subp. 50a, will not change the intended meaning of the two existing uses of the term in this Chapters, but will improve clarity, consistency, and understanding of the intended meaning to these uses as well as to the newly proposed use. Therefore, it is reasonable and necessary to adopt this definition.

2) Minn. R. 7035.2525

Justification for Minn. R. 7035.2525, Subp. 2, Items A & L

Two parallel new provisions prohibiting composting of waste treated seed at backyard compost sites and small compost sites are added. This prohibition applies the Legislature's directive in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, to these sites.

Composting facilities in Minnesota are regulated under Minn. R. 7035.2525 as one of five categories: backyard compost sites, small compost sites, solid waste compost facilities, source-separated organic material compost facilities, and yard waste compost facilities. In reverse order, waste treated seed does not meet the definition of yard waste under Minn. R. 7035.0300, Subp. 121, and is therefore

categorically ineligible for management in yard waste compost facilities. No change is needed to apply the Legislature's directive to such facilities. The proposed change already discussed to the definition of source-separated organic material in Minn. R. 7035.0300, Subp. 105a, to exclude waste treated seed from this definition will result in a similar categorical ineligibility for management of waste treated seed in source-separated organic material compost facilities. Solid waste compost facilities are directly addressed following in the revision to Minn. R. 7035.2836, Item M, which explicitly prohibits composting of waste treated seed. Rather than restate the prohibition multiple times effectively verbatim, it is more efficient to reference this clear, explicit prohibition from the remaining two types of compost sites in Minnesota. While the statutory prohibition would still apply in the absence of any rule statement, adding clear statements to the rule will enhance knowledge of the ban and increase understanding. It is necessary and reasonable to add clear statements that waste treated seed may not be composted at these sites.

3) Minn. R. 7035.2535

Justification for Minn. R. 7035.2535, Subp. 5, Item B; and Item B, Subis. (12), (13), and (14)

A reference to the new proposed Minn. R. 7035.3700 is added to ensure that industrial solid waste management facility operators are aware of its existence and requirements when preparing their industrial waste management plans if they will receive waste treated seed. Therefore, it is reasonable to add this reference.

Subi. (12) is altered grammatically to reflect the newly added Subi. (13), and existing Subi. (13) is renumbered to (14) to similarly reflect the addition. No change to the text or intended meanings of these subitems is made. It is reasonable and necessary to alter and renumber these subitems to maintain the structure of this rule.

4) Minn. R. 7035.2815

Justification for Minn. R. 7035.2815, Subp. 6, Item A

A new requirement to place immediate cover on waste treated seed is added to the mixed municipal solid waste land disposal facility standards. Currently, the standards for mixed municipal solid waste land disposal facilities only require weekly cover to the working face. A critical risk for waste treated seed is exposure to wildlife by foraging, such as at a land disposal facility. When planted for crops on land used for farming, treated seed is either drilled deep into the soil, or is immediately covered as an integral Minn. R. of the planting action. However, placement on the necessarily exposed working face of a land disposal facility would subject waste treated seed to foraging by wildlife commonly present at such facilities in Minnesota, including birds and deer. Immediate protection by covering is necessary and reasonable to minimize this risk as much as possible.

Justification for Minn. R. 7035.2815, Subp. 11, Item F, (1)

This subitem is numbered to improve readability in consequence of the addition of the text in proposed Subi. (2). No change to the text or intended meanings of this subitem is made. It is reasonable and necessary to number this subitem to add structure and maintain the readability of this Minn. R. .

Justification for Minn. R. 7035.2815, Subp. 11, Item F, (2)

A clarified requirement for mixed municipal solid waste land disposal facilities accepting waste treated seed is added to require the operator to determine the maximum volume of waste treated seed the facility can accept daily to ensure the capacity of the facility's decomposition gas management system is not exceeded. The MPCA considers that this requirement is already an inherent element of the body of Item F, but may be overlooked if the reader is not careful. Waste treated seed is also a nearly-entirely organic waste subject to substantial decomposition in many land disposal facility conditions. This decomposition may release more flammable gasses than many mixed municipal solid wastes. This

clarified expectation has been communicated to land disposal facility operators in published MPCA guidance documents for over two years with no objection by land disposal facility operators or observed burden to land disposal facility operations. It is reasonable to clearly and explicitly specify this requirement.

Justification for Minn. R. 7035.2815, Subp. 13, Item A

A new requirement for mixed municipal solid waste land disposal facilities accepting waste treated seed is added to require the operator to spread the waste treated seed to maintain working face slope stability and minimize localized settlement. These facilities already have a maximum spread depth of two feet on the working face under existing Item A. However, this depth may be too deep for the specific characteristics of waste treated seed, depending on all the facility and working face characteristics, such as slope, underlying waste composition, and cover material.

Waste treated seed is a relatively small, granular, round-shaped waste that in large quantities presents a significantly higher risk of slope slump and movement after deposition than most solid wastes. In addition, waste treated seed is also a nearly-entirely organic waste subject to substantial decomposition in many land disposal facility conditions. This decomposition will release flammable gasses, addressed elsewhere in this rulemaking, as well as result in substantial reduction in size and mass of the deposited waste. Significant reductions in waste volume after deposition and covering may result in localized settlement, hindering facility operations and posing safety risks for operators and vehicles traversing the area. One of the most effective methods to manage these risks is to limit the depth of deposition and compaction of the waste treated seed.

This clarified expectation has been communicated to land disposal facility operators in published MPCA guidance documents for over two years with no objection by land disposal facility operators or observed burden to land disposal facility operations. It is reasonable to codify this clarification. [See MPCA fact sheet #w-hw4-51, versions April 2022 & December 2023]

5) Minn. R. 7035.2836

Justification for Minn. R. 7035.2836, Subp. 5; and Subp. 5, Item M

A new provision prohibiting composting of waste treated seed at solid waste compost facilities is added. This prohibition applies the Legislature's directive in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, to these facilities.

Composting facilities in Minnesota are regulated under this Minn. R. as one of five categories: backyard compost sites, small compost sites, solid waste compost facilities, source-separated organic material compost facilities, and yard waste compost facilities. In reverse order, waste treated seed does not meet the definition of yard waste under Minn. R. 7035.0300, Subp. 121, and is therefore categorically ineligible for management in yard waste compost facilities. No change is needed to apply the Legislature's directive to such facilities. The proposed change already discussed to the definition of source-separated organic material in Minn. R. 7035.0300, Subp. 105a, to exclude waste treated seed from this definition will result in a similar categorical ineligibility for management of waste treated seed in source-separated organic material compost facilities. Small compost sites and backyard compost sites are subject to the Legislature's ban and are addressed above in the changes to Minn. R. 7035.2525, Subp. 2. Therefore, only this new provision in Minn. R. 7035.2836, Item M, is needed to complete application of the Legislature's mandate.

In addition to the need to apply the Legislature's clearly stated intent, it is necessary and reasonable to prohibit waste treated seed from being composted in Minnesota. The intended use of compost is to replenish, enrich, or add nutrients or beneficial characteristics to soil to support plant growth, usually agricultural or horticultural plantings. During the composting process, components of the composted

materials that do not or will not readily biodegrade will be either concentrated into the finished compost or will be released into the environment. The majority of seed treatments borne by waste treated seed are pesticides, fungicides, or herbicides; substances intentionally designed to harm animal or plant life. When concentrated and applied in compost, or released during the composting process, all of these substances present a significant risk of endangering humans, food, livestock, fish, or wildlife. Such a result is also contradictory to the Legislature's explicit prohibition in Laws of Minnesota 2023, Ch. 60, Art. 9, Sec. 2, which prohibits use, handling, or disposition of waste treated seed in a manner that "...endangers humans, food, livestock, fish, or wildlife; or will cause unreasonable adverse effects on the environment...". It is therefore reasonable to render waste treated seed ineligible for management by composting.

6) Minn. R. 7035.3700

Justification for Minn. R. 7035.3700, Subp. 1

The scope of the applicability of the new waste treated seed provisions are stated. It is necessary and reasonable to ensure that it is clear that the requirements and prohibitions apply to any person in Minnesota managing or otherwise disposing of waste treated seed. The general collection and transportation provisions of Minn. R. 7035.0800 already apply to all persons that own or occupy any premises in the state, which would include any location where waste treated seed is accumulated.

However, based on the MPCA's observations and the relative prevalence of treated seed in the agricultural sector and relative rarity in the household planting sector, the MPCA does expect that the majority of persons directly affected will be manufacturers, dealers, retailers, agricultural cooperatives, and farmers. All of these groups are already familiar with identifying treated seed and taking safety precautions when handling it. Additionally, the MPCA, the Minnesota Department of Agriculture (MDA), and the University of Minnesota (UMN) have implemented outreach and education efforts over the last two years to make these groups aware of the need and specific requirements for waste treated seed management. Therefore, the MPCA does not expect the scope of applicability of these provisions to be unforeseen nor controversial.

Justification for Minn. R. 7035.3700, Subp. 2

The regulated status of waste treated seed under Chapter 7035 and Chapter 7045 as an industrial solid waste is declared. Wastes in Minnesota that are not exempt from hazardous waste regulation under Minn. R. 7045.0120 must, under Minn. R. 7045.0214, Subp. 1, either be assumed to be a hazardous waste or be evaluated and determined to not meet the criteria for hazardous waste under Minn. R. 7045.0214, Subp. 2.

Wastes that are either exempt from hazardous waste regulation under Minn. R. 7045.0120, or that have been evaluated and determined to be non-hazardous under Minn. R. 7045.0214, then revert to regulation as solid waste under Chapter 7035.

Waste treated seed, if generated by manufacturers, dealers, retailers, agricultural cooperatives, or similar commercial enterprises or government entities, would not be exempt from hazardous waste regulation under the existing Minn. R. 7045.0120. However, the MPCA evaluated many example types of waste treated seed and determined that waste treated seed would likely not meet any of the definitions of listed wastes under Minn. R. 7045.0135, as referenced by Minn. R. 7045.0214, Subp. 2, Item A, when managed as proposed in this rulemaking. Similarly, the MPCA also found that waste treated seed managed as an industrial solid waste under the proposed provisions of this rulemaking would likely not meet any of the definitions of characteristic waste under Minn. R. 7045.0131, as referenced by Minn. R. 7045.0214, Subp. 2, Item B.

Waste treated seed is not a liquid nor compressed gas, so is categorically not Ignitable hazardous waste under Minn. R. 7045.0131, Subp. 2, Items A or C. Waste treated seed managed as an industrial solid waste would also not be likely expected, under standard temperature and pressure, of causing fire through friction, absorption of moisture, or spontaneous chemical changes, nor, when ignited, would it likely burn so vigorously and persistently that it creates a hazard. The treatments applied to treated seed, such as pesticides, fungicides, and herbicides, do not substantively alter the predominant combustion traits of corn, which burns similarly to other dense vegetative materials such as wood. Waste treated seed managed as an industrial solid waste would therefore likely not be an Ignitable hazardous waste under Minn. R. 7045.0131, Subp. 2, Item B.

Though some of the treatments applied to treated seed and thus found in waste treated seed may include chemical components that are oxidizers, such as oxides, organic and inorganic peroxides, permanganates, perhenates, chlorates, perchlorates, persulfates, nitric acid, organic and inorganic nitrates, iodates, periodates, bromates, perselenates, perbromates, chromates, dichromates, ozone, or perborates, the relative concentration of these components in ratio to the mass of each individual seed would render the waste treated seed when managed as an industrial solid waste to likely not be an oxidizer as defined in Code of Federal Regulations, title 49, section 173.127, as amended, nor would the waste treated seed likely readily supply oxygen to a reaction in the absence of air. Waste treated seed managed as an industrial solid waste would therefore likely not be an Oxidizer hazardous waste under Minn. R. 7045.0131, Subp. 3.

Waste treated seed is not aqueous nor a liquid. Therefore, waste treated seed managed as an industrial solid waste is categorically not a Corrosive hazardous waste under Minn. R. 7045.0131, Subp. 4.

Waste treated seed managed as an industrial solid waste not normally be expected to be unstable nor readily undergo violent change without detonating; react violently with water; or form potentially explosive mixtures or generate toxic gases, vapors, or fumes when mixed with water. Though some of the treatments applied to treated seed may contain cyanide or sulfides, in parallel to as found for the Oxidizer Characteristic, the relative concentration of such potential treatment components in ratio to the mass of each treated seed would likely not result in waste treated seed managed as an industrial solid waste generating toxic gases, vapors, or fumes nor being capable of detonation or explosive reaction. Waste treated seed is not a forbidden explosive as defined in Code of Federal Regulations, title 49, section 173.54, as amended, a Division 1.1 or 1.2 explosive as defined in Code of Federal Regulations, title 49, section 173.50, as amended, or a Division 1.2 or 1.3 explosive as defined in Code of Federal Regulations, title 49, section 173.50, as amended. However, waste treated seed managed by grinding or processing for industrial purposes could be capable of detonation or explosive reaction if strong initiating source or if heated under confinement. These management methods would not be allowed under industrial solid waste management plans reviewed and approved by the Agency. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a Reactive hazardous waste under Minn. R. 7045.0131, Subp. 5.

Though some of the treatments applied to treated seed and thus found in waste treated seed may independently display toxicological properties sufficient to render those treatments in original form as Lethal hazardous wastes, the relative concentration of such potential treatment components if not additionally concentrated by management methods proposed to be prohibited for waste treated seed as industrial solid waste, such as by composting or uncontrolled burning or use as feedstock, in ratio to the mass of each treated seed, would likely render the waste treated seed consistently non-Lethal by over two orders of magnitude for even the most poisonous modern treatment chemical. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a Lethal hazardous waste under Minn. R. 7045.0131, Subp. 6.

Historically, some heavy metals that could render a waste a Toxicity Characteristic hazardous waste, including arsenic, lead, and mercury, were used as pesticide components, potentially in some seed treatments. All potential seed treatment uses of arsenic were phased out nationally by 2013, mercury uses by 1993, and lead uses by 1988, though the MPCA believes that actual uses in pesticides and fungicides used for seed treatment of these particular heavy metals actually ceased earlier in almost all cases. While other Toxicity Characteristic heavy metals, including barium, cadmium, chromium, and silver, remain allowed components of some pesticides registered with the EPA, none of those pesticides are allowed for use in seed treatment. Selenium is a differential case, as this heavy metal also is a plant nutrient and potential antagonist of natural arsenic and other heavy metal exposure as well as being its own bioaccumulative toxin. However, the threshold concentration of selenium producing agricultural harm, and therefore the highest reasonably expected potential concentration found in waste treated seed managed as an industrial solid waste, would render the waste treated seed consistently non-Toxic by over an order of magnitude. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a D004, D005, D006, D007, D008, D009, D010, or D011 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Several historic pesticides, some of which could have been potentially used in seed treatments, could, if present, render a waste a Toxicity Characteristic hazardous waste. Use of 2,4,5-TP (Silvex) was banned by the EPA in 1983; 2,4,5-trichlorophenol in 1985; chlordane in 1988; toxaphene in 1990; methoxychlor in 2004; lindane in 2006; and hexachlorobutadiene in 2021. The use of pentachlorophenol was restricted from agriculture in 1987, and heptachlor in 1988. According to the U.S. Centers for Disease Control and Prevention's (CDC) Agency for Toxic Substances and Disease Prevention (ATSDR), endrin has not been sold in the United States since 1986, and 2,4,6-trichlorophenol since no later than 1989. Since treated seed has a relatively short usable life, limited to one to two years of viability, the MPCA reasonably expects that waste treated seed generated presently in Minnesota would not likely contain any of these pesticides. Finally, several pesticides, though still in active use in the United States, do not appear to be currently registered with the EPA for use as seed treatments or as ingredients in seed treatments, and therefore would be prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from this use, including m-cresol; 2,4-D; 1,4-dichlorobenzene; hexachloroethane; nitrobenzene, and pyridine. Therefore, waste treated seed would not reasonably be a D020, D024, D016, D027, D012, D031, D032, D033, D034, D013, D014, D036, D037, D038, D015, D041, D042, or D017 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Some solvents, including chlorobenzene, still in active use in the United States in pesticide formulations are, as part of the seed treatment process, intended to help carry the pesticide active ingredient and then evaporate during the treatment and finishing process to leave a solid or granular treatment coat on the seeds. Under expected treated seed manufacturing and storage conditions, the physical character and intended use of these solvents, as well as reduction by oxidation and evaporation upon exposure to air and decomposition upon exposure to light, results in significant reduction of the solvent content to residual level similar to evaporation of aqueous solutions. The residual of such solvent would reasonably be expected to render the waste treated seed non-Toxic by at least several orders of magnitude. Therefore, waste treated seed, when managed as an industrial solid waste as proposed in this rulemaking, would not reasonably be a D021 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Several industrial chemicals and solvents have historically not been used, would not reasonably have an expected use, nor have been approved for use in seed treatments, including benzene; carbon tetrachloride; chloroform; o-cresol; p-cresol; 1,2-dichloroethane; 1,1-dichloroethylene; 2,4-dinitrotoluene; methyl ethyl ketone; tetrachloroethylene; trichloroethylene; and vinyl chloride.

Therefore, waste treated seed would not likely be a D018, D019, D022, D023, D025, D026, D028, D029, D030, D035, D039, D040, or D043 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

In conclusion, though the treatments applied to waste treated seed do still present risk to human health and the environment when the waste treated seed is disposed, necessitating the reasonable requirements proposed in this rulemaking, waste treated seed managed properly as an industrial solid waste as proposed in this rulemaking would not likely be a regulated hazardous waste in Minnesota.

Under Chapter 7045, it is the generator of a waste that has a non-delegable responsibility for properly and sufficiently evaluating its waste. Historically, the MPCA does not remove the duty upon generators for performing an evaluation. In this limited case of waste treated seed, the MPCA has decided that it is appropriate to exempt waste treated seed from the requirements of Chapter 7045 if it is managed according to standards proposed in this rulemaking. In reaching this conclusion, the MPCA has considered that:

- The regulated groups that would otherwise be required to evaluate waste treated seed, including farmers and seed dealers and retailers, are relatively unfamiliar with the Hazardous Waste Program, both generally and regarding the specific requirements of evaluation;
- Since no alteration of treated seed between manufacture as product and generation as waste treated seed is expected, and the universe of treated seed is limited in allowed treatments and concentrations by the existing FIFRA regulations administered by the EPA and parallel pesticide regulations administered by the MDA, the MPCA reasonably expects that the evaluations it performed under the expected allowed disposal methods are likely representative of waste treated seed as a category;
- As a consequence of this consistency, waste evaluations otherwise performed by each individual waste treated seed generator who is compliant with the proposed requirements in this rulemaking to manage the waste treated seed as an industrial solid waste would be duplicative and would not increase environmental or human health protection in Minnesota.

In sum, the MPCA concluded that requiring compliance with the evaluation requirements by each individual waste treated seed generator that is compliant with the proposed disposal requirements in this Minn. R. would be unnecessarily burdensome and inappropriate. Therefore, the proposed directed status of waste treated seed as industrial waste without individual evaluation by each generator, explicitly conditioned on managed of the waste treated seed as proposed in this rulemaking, is necessary and reasonable.

Waste treated seed does meet the existing definition of an industrial solid waste under Minn. R. 7035.0300, Subp. 45, as *"...solid waste generated from an industrial or manufacturing process and solid waste generated from nonmanufacturing activities such as service and commercial establishments...."* Distributing, retailing, warehousing, and farming are nonmanufacturing activities. Waste treated seed also does not meet any of the exclusions from industrial solid waste as *"...office materials, restaurant and food preparation waste, discarded machinery, demolition debris, municipal solid waste combustor ash, or household refuse..."*.

However, the MPCA cannot determine that waste treated seed that were to be improperly managed, such as if buried, burned, or composted through methods other than those proposed to be allowed under this rulemaking and that have been studied by the MPCA, would consistently and reliably not meet any of the hazardous waste characteristics. Therefore, the proposed exclusion from Chapter 7045 is limited only to waste treated seed and containers that held treated seed that are managed in compliance with this proposed rulemaking. Waste treated seed not managed in compliance with the

provisions proposed in this rulemaking would remain fully subject to evaluation under Chapter 7045 and management according to the results thereof, or management as a hazardous waste if not so evaluated.

In contrast to the waste treated seed itself, waste containers from treated seed, such as plastic or coated paper bags, buckets, or totes are more varied than the treated seed itself and are instead similar to other mixed municipal solid waste. The proportion of treatment constituents from the treated seed that are the sources of primary environmental and human health risk concern is also reasonably expected to be significantly lower as residual in containers than on the treated seed itself. Such containers are expected to present similar environmental and human health risks as other similar mixed municipal solid wastes and do not present the decomposition, settling, gas generation, or wildlife foraging risks of waste treated seed, so the waste-specific management required for industrial solid waste would be unnecessarily burdensome.

Therefore, it is necessary and reasonable to declare that waste treated seed managed under the provisions proposed in this rulemaking is industrial solid waste and that waste containers that held treated seed are mixed municipal solid waste.

Justification for Minn. R. 7035.3700, Subp. 3, Items A to C

Cross-references to each of the applicable new statutory provisions enacted by Laws of Minnesota 2023, chapter 60, are made. These cross-references do not themselves create any new requirements or burden, but effectively serve as a pointer to each of the specific provisions. These cross-references will improve accessibility and knowledge of the new provisions and reduce confusion for the reader. It is reasonable to improve readability and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A

This Item clarifies the already-existing limitations and conditions for disposal of waste treated seed. Under existing rules and statutes, such disposal would only be allowed at mixed municipal solid waste land disposal facilities, at industrial solid waste disposal facilities, and, for certain generators, on land used for farming. Restating and clarifying these existing limitations and conditions will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, Subi. (1)

The MPCA has already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. This subitem restates and clarifies the already existing requirement that industrial solid waste, in the form of waste treated seed, may only be disposed of at a mixed municipal solid waste land disposal facility, in compliance with the Minn. R. 7035.2815. It is reasonable to improve clarity and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, Subi. (2)

The MPCA has already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. In addition to disposal of industrial solid waste at mixed municipal land disposal facilities, which is already allowed, the MPCA considers that disposal with equivalent environmental protection requirements may be feasible at other land disposal facilities in the state. For instance, some industrial solid waste land disposal facilities and some demolition debris land disposal facilities are already equipped with liners and leachate management systems equivalent to those required for mixed municipal land disposal facilities. One of the primary concerns regarding waste treated seed disposal at land disposal facilities is potential leaching and migration of concentrated pesticides from the waste treated seed into soil and groundwater under the facility. Liners and leachate management systems are the primary protective measures to mitigate this risk. Facilities that are equipped with liners and leachate management systems and that demonstrate to the Agency that they

can safely manage waste treated seed would, for the purposes of waste treated seed management, then be effectively equivalent to a mixed municipal solid waste land disposal facility already allowed to accept waste treated seed, as long as they also followed the management and operational standards required for waste treated seed at mixed municipal solid waste land disposal facilities. It is reasonable to not unnecessarily restrict land disposal facilities that can safely management waste treated seed and prevent release of harmful constituents from the waste treated seed into the environment from receiving and properly managing this waste. Clearly allowing such management will continue to protect human health and the environment, while also providing the maximum number and variety of land disposal facilities to receive this waste stream to ensure available and convenient proper disposal is available to waste treated seed generators and haulers. It is reasonable to clearly identify the minimum land disposal facility requirements necessary to accept waste treated seed and to identify the management and operational standards such facilities must meet.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, subItem (3)

The MPCA already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. Previously existing Minn. Stat. § 17.135, (a), conditionally exempts a person who owns or operates land used for farming from being required to obtain a permit from a state agency to bury solid waste generated as a part of that person's farming operation. Absent this exemption, burial of industrial solid waste by any person in Minnesota would require a permit from the MPCA, such as are required for mixed municipal solid waste disposal facilities, industrial solid waste disposal facilities, and composting facilities. Waste treated seed generated by a person who owns or operates land used for farming would reasonably be considered waste generated as a part of that person's farming operation, and eligible for the permit exemption. The exemption is subject to conditions that such burial be performed "on the land used for farming" and "in a nuisance-free, pollution-free, and aesthetic manner". The first condition is restated in the body text of this subitem.

Newly enacted Minnesota Statute § 115A.993 further requires that any burial of waste treated seed not be "...near a drinking water source or any creek, stream, river, lake, or other surface water...." The Legislature's clear statement that burial not be "near" these waters reasonably necessitates the MPCA to establish in this rulemaking specific minimum setback distances to these waters from a burial location. Additionally, the MPCA must determine in this rulemaking the applicable meaning of the condition "pollution-free" as it relates to setback distances from and protections for surface water and underground waters, both at the time of burial and foreseeable future. These distances and protections are specified in paragraphs (a) through (f).

The MPCA first considered the appropriate setback distances for water-supply wells. The historical solid waste rules for sites at which industrial solid waste will be buried for disposal did not specify minimum setbacks to water-supply wells, since identification of all potentially-impacted wells is an inherent part of the preliminary planning process for solid waste land disposal facilities. For industrial solid waste land disposal facilities, prior to this rulemaking, this would involve defining the hydrogeology, including use of all water resources, in the potential zone of influence of the proposed facility under Minn. R. 7035.1800. This standard would be prohibitively burdensome for a person operating land used for farming who would be burying only waste treated seed from their farming operation under this proposed subitem.

Considering the normal intended use of treated seed, and the relative expected volume and risks of waste treated seed that may be buried for disposal on land use for farming, the MPCA believes that it is instructive to consider the setbacks established by the MPCA for land treatment of contaminated soils under existing Minn. R. 7037.0900, Item D, of at least 200 feet from a water-supply well. The most likely proximal water-supply well would be the farm's own water-supply well. The risks to the farm's own water-supply well, reasonably expected to be used by the same persons responsible for the burial of

waste treated seed regulated under this provision, are real, but limited in scope. The risks from treatment of contaminated soil, including release of relatively small amounts of contaminants to a water-supply well of relatively limited use, are comparable to burial of the volumes and frequencies of waste treated seed reasonably expected under this provision. Therefore, it is reasonable to apply a similar minimum setback distance from any water-supply well. However, because the definition of this term includes water-supply wells used for other than human or animal drinking water, such as irrigation or heating and cooling, which would not reasonably be affected by potential releases from burial of waste treated seed, and because of the Legislature's explicit restriction on "...burial near a drinking water source...", it is appropriate to clarify that this restriction applies to water-supply wells used for human or animal drinking water.

Similarly, because of the substantially higher risk presented by potential contamination of public water supplies, which serve many people, and which include both wells and surface waters, it is reasonable to require a substantially larger setback distance from public water supplies. Again, the MPCA believes it is instructive to consider the setbacks established by the MPCA for land treatment of contaminated soils under existing Minn. R. 7037.0900, Item D, of at least 1000 feet from a public water-supply well. The risks from treatment of contaminated soil, including release of relatively small amounts of contaminants to a water-supply well of relatively limited use, are again comparable to burial of the volumes and frequencies of waste treated seed reasonably expected under this provision. Because public water supplies include both wells and surface waters, which may be inter-related and feed each other, it is reasonable to apply the setback to all public water supplies, not just those provided from wells. Therefore, it is again reasonable to apply a similar setback distance for burial of waste treated seed from public water supplies.

The MPCA believes that a person owning or operating land used for farming would most often already know, or easily be able to identify, water-supply wells used for drinking water within 200 feet of their intended waste treated seed burial site, particularly since the majority of such water-supply wells would most likely be on the land used for farming itself, and thus within the personal knowledge of the person performing the burial. Similarly, public water supplies, since they serve multiple users, are recorded and if not already known to persons owning or operating land used for farming, may be identified through public agencies including counties and the MDH. Avoiding the need for persons operating land used for farming to prepare complete hydrogeological profiles of the areas potentially impacted by burial for disposal of only their waste treated seed by establishing specific minimum setback distances from water-supply wells and public water supplies is necessary and reasonable.

The MPCA next considered the appropriate setback distances for surface waters also required by the Legislature's explicit restriction on "...burial near...any creek, stream, river, lake, or other surface water...." Surface waters are more easily contaminated and may carry contamination some distance by the free flow afforded surface waters from gravity or wind rather than the restricted flow exhibited by underground waters from hydrological pressure and through various ground media, raising risk. Applying this restriction and risk, adjusted for the reasonably expected risk from the relatively small volumes and frequency of waste treated seed burial likely by persons owning or operating land used for farming, the MPCA believes it is instructive to consider the minimum setback distances historically required for sites at which limited solid wastes were buried for disposal without site-specific review by the MPCA, under Minn. R. 7035.2825, Subp. 2.

Though that allowance for burial of limited solid wastes without MPCA review itself is currently being revised for other reasons, the MPCA believes that the water protection standards it applied remain valid and informative to the MPCA in derivation of geology and landform limitations, water table separation, backfill depth, and final surface contouring of waste treated seed burial sites to be allowed under this limited conditional exemption.

The considered setbacks restrict burial on land that is karst and that is within a wetland, floodplain, or shoreland. The MPCA believes that these setbacks are consistent with both the Legislature's intent and with establishment of reasonable and necessary environmental protection. The MPCA also believes that a person owning or operating land used for farming would most often already be familiar with that land's designation relative to wetlands, floodplains, and shorelands, since these designations may substantially affect the farming operation and when and how the land is used for farming under other state and federal regulations and guidelines, such as crop insurance and wetland protection. Similarly, the land's identification as karst would be expected to substantially affect water management and thus planting and irrigation, essential factors for a person owning or operating land used for farming to consider. Therefore, it is reasonable and necessary to apply these conditions to burial of waste treated seed on land used for farming.

Regarding vertical setback from the water table, the MPCA believes that the majority of persons owning or operating land used for farming are already aware of the depth of their local water table, as that depth can affect planting, drainage, irrigation, and other farming-related factors, and thus such persons would have the knowledge needed to comply with this protective requirement without imposing an unreasonable burden or additional effort. However, this minimum depth, five feet, is large enough that this exception would remain available for most land used for farming in the state. The MPCA believes that this precautionary measure is consistent with and meets the intended purpose of the Legislature that solid waste generated as part of the person's farming operation be buried in a "pollution-free" manner as required by the Legislature, because it will reduce the likelihood of buried waste treated seed from impacting groundwater.

Regarding drainage, appropriate site slope and cover, and forethought given to the intended future use of the site following burial of waste treated seed, the MPCA believes these expectations are reasonable and necessary and consistent with the Legislature's conditions for burial of waste generated as part of a farming operation discussed generally above.

Finally, the body text of Subi. (3) restates the statutory ineligibility of this exception for a farm where scheduled pickup of solid waste is reasonably available, under the final paragraph of Minn. Stat. § 17.135, (a) This exception is limited by the explicit statutory language, and the MPCA has not been extended authority by the Legislature to alter this ineligibility by rule.

Justification for Minn. R. 7035.3700, Subp. 4, Item B

This Item clarifies the already-existing limitations and conditions for burning waste treated seed for disposal or energy recovery. The MPCA already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. Waste burning is considered as taking place either in a burning or combustion unit, or in the open.

Any unit or facility used to burn, otherwise referred to in applicable Minnesota Rules as to combust, solid waste is a waste combustor under Minn. R. 7011.1201, Subp. 46. Waste combustors are classified as Class I through Class IV for recently constructed waste combustors and classes A and C for older waste combustors. Burning waste in Class I through III, and Class A and C waste combustors requires an air quality permit issued by the MPCA or EPA. Functionally, all waste combustors burning waste in Minnesota are energy recovery facilities, also known as Waste-To-Energy (WTE) facilities and are issued

an air quality permit by the EPA or MPCA. The conditional exemption from state agency permitting of burning on the land used for farming of waste generated as part of a person's farming operation in Minn. Stat. § 17.135, (a), does not and cannot exempt any waste combustors from any applicable federal EPA permitting.

Class IV waste combustors, meaning those with a design capacity of less than three million British thermal units (Btu) per hour, are nearly all prohibited in Minnesota under Minn. R. 7011.1220, with exceptions only for hospitals, human or animal crematoria, and metals recovery incinerators. None of these excepted combustors may burn industrial solid waste. These relatively flatly prohibited small Class IV waste combustors are the most likely to be operated without emissions controls or monitoring systems, and produce significantly more toxic emissions per volume of waste burned than the larger waste combustors that are allowed and subject to state or federal permitting in Minnesota.

The conditional exemption from state agency permitting in Minn. Stat. § 17.135, (a) of burning on the land used for farming of waste generated as part of a person's farming operation does not exempt such burning from any other applicable statutory restrictions or prohibitions. Minn. Stat. § 88.171, Subd. 2, prohibits the open burning of "chemically treated materials". Waste treated seeds by definition would be considered a "chemically treated material" subject to this burning prohibition. The new prohibition in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, located in Minn. Stat. § 115A.993, to burning waste treated seed within a home or dwelling adds to these preexisting burning restrictions and conditions, but does not obviate nor limit them.

Together, these existing restrictions, as well as the new restriction, result in waste treated seeds being eligible to be burned for disposal or energy recovery only in an energy recovery facility knowingly issued an air quality permit by the MPCA or EPA to burn mixed municipal solid waste or industrial solid waste explicitly identified as including waste treated seed. These strictly regulated energy recovery facilities are required to take measures to plan for, identify, and control air emissions, including likely toxic emissions. Burning of waste treated seed by such facilities after explicit review and approval by the MPCA would be subject to close oversight and continuing assessment and review of the environmental and human health risks of such burning. Restating and clarifying these existing restrictions will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension of the existing restrictions.

Justification for Minn. R. 7035.3700, Subp. 4, Item C

This Item restates the restrictions from disposal by composting of waste treated seed enacted in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, located in Minn. Stat. § 115A.993; and also implemented in the proposed Minn. R. s 7035.0300, Subp. 105a; and 7035.2836, Subp. 5, Item M. The justification for those Minn. R. s is stated in the justification narratives for each respectively. Restating and clarifying this restriction will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension.

Justification for Minn. R. 7035.3700, Subp. 4, Items D, E, and F

The MPCA lists non-legitimate uses of waste treated seed expected to cause significant harm to human health or the environment, or to cause substantial risk of significant harm to human health or the environment, yet would still be expected to be attempted without these prohibitions. Existing Minn. R. 7035.0800 already requires satisfactory collection and transportation of solid waste, such as waste treated seed, to a facility that is authorized to accept the waste. Because waste treated seed is considered an industrial solid waste, the use, donation, sale, and offers of waste treated seed for human food, animal feed, and oil processing, would already be effectively prohibited. As further discussed below, it is needed and reasonable to expressly prohibit these activities due to the risk to human health and the environment and the reasonably foreseeable risk that waste treated seed generators may

attempt to effectively dispose of waste treated seed through one of these illegitimate uses.

Waste treated seed has already in Minn. R. 7035.3700, Subp. 2, been clarified to be a solid waste regulated by the MPCA. Delineation of proper and improper solid waste management methods is a necessary and critical core responsibility of the MPCA. The Legislature has long directed the MPCA in Minn. Stat. 115A.02, (b), to apply a hierarchy of waste management methods, in order, with the first preferred approach being waste reduction and reuse. Inherent economic motivators also commonly drive waste generators to consider possible reuses of wastes as alternatives to standard waste disposal, if only to avoid otherwise incurred potentially significant disposal costs, even if the possible reuse results in little to no inherent economic benefit. Such waste reuse, when appropriate and safe for human health and the environment, can result in benefits to human health and the environment.

However, these economic pressures to avoid waste disposal costs can also, in the absence of clear guidelines from and oversight by the MPCA, result in reuses that directly or indirectly harm human health and the environment, both immediately and long-term. The MPCA is aware of a history of effectively sham reuses of wastes that have caused harm, ranging from toxic heavy metal-containing paint wastes being sprayed on the underside of automobiles as ostensible “rustproofing,” to toxic fire retardant-bearing kitchen utensils made from recycled electronics casings, to, particularly relevant to this rulemaking, treated wood scraps allegedly sold for firewood.

Therefore, it is reasonable for the MPCA to clearly prohibit reuses of waste treated seed that might otherwise be possible, or even likely in some situations, to prevent harm to human health and the environment. In doing so, the MPCA finds instructive the directives and cautions of other agencies with experience dealing with treated seeds, including the U.S Food & Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the EPA, and the MDA, as well as the reasoning of the Legislature.

In an explanatory discussion in the body of the actual federal regulation relating to treated seed coloration, the FDA at 21 CFR 2.25 describes instances where treated seed has been used for human food and animal feed preparation. While common sense would suggest that such reuse would not be directly contemplated by reasonable handlers of waste treated seed, the highly segregated nature of both the human food and animal feed processing chains in today’s industry may obscure the original producer or the ultimate use from both each other as well as intermediate handlers unless extremely clear communication of what methods can and cannot be used for waste treated seed are made from the outset. While the coloration required for certain treated seed, and generally utilized by the industry for nearly all treated seed, even when not explicitly required, is intended to be a visual warning that the seed is treated, it does not and cannot prohibit use of waste treated seed for those cautioned uses, since the users and thus handlers of any resulting waste treated seed are not regulated by the FDA for this respect; it is the need and responsibility of the MPCA in this rulemaking to directly regulate waste treated seed management as the solid waste it is, including prohibited reuse.

Similarly, USDA federal regulation relating to treated seed labeling at 7 CFR 201.31 requires that any treated seed that could be harmful to humans or other animals be labeled with cautions not to use the treated seed for food, feed, or oil purposes. However, again, these labels are intended to be textual warnings to the user, but do not and cannot prohibit use of waste treated seed for those cautioned uses, since the users and thus handlers of any resulting waste treated seed are not regulated by the USDA for this respect; it is the need and responsibility of the MPCA in this rulemaking to directly regulate waste treated seed management as the solid waste it is, including reasonably foreseeable but illegitimate uses.

The EPA’s federal regulation relating to use of pesticides in accordance with their EPA-approved label instructions required under FIFRA at 40 CFR 170.9, while technically a requirement, was determined by

the EPA in 2022, and confirmed in 2023, at 88 FR 70628, to be “...not generally enforceable under FIFRA...”. It is therefore again the need and responsibility of the MPCA in this rulemaking to directly regulate, waste treated seed management as the solid waste it is, including prohibited reuse.

In the same Session Law that mandated this rulemaking, the Legislature enacted a new MDA restriction on use of seed treated with neonicotinoid pesticides from ethanol feedstock use at Minn. Stat. 21.86, Subd. 2. While this direct restriction is the province of the MDA, not the MPCA, the MPCA has consulted with the MDA. MPCA finds that the potential reuse of waste treated seed for fuel use, including biodiesel produced from waste treated soybeans or other oil-bearing waste treated seed, biomass, or sustainable aviation fuel made from a potential variety of waste treated seed, that involve other toxic pesticides that are not neonicotinoids, raises similar and parallel human health and environmental risks as the already-seen ethanol made from waste treated seed corn that was addressed in the new MDA statute. This infamous example of widespread and severe pollution caused by the AltEn ethanol refinery in Mead, Nebraska’s use of waste treated seed for fuel-production feedstock, was pointed to by the sponsor of the bill that was passed as 2023 Session Law, Ch. 60, as a stark warning. The MPCA finds this warning instructive and believes it is necessary to ensure that this rulemaking in parallel also clearly state the MPCA’s determination that fuel use is not an allowed solid waste management method for waste treated seed.

In promulgating these safeguards, the MPCA clarifies that the exchange of value or actual sale is not controlling, as the same human health risk or environmental damage would come from waste treated seed that is sold for processing into, for instance, wildlife feed, as waste treated seed that is offered free for such use, i.e. donated. Indeed, in cases of sham reuse of solid wastes, it is often the avoided disposal cost that is of far higher value to the offeror than any compensation from a receiver they may expect to obtain. The MPCA’s primary concern is the ultimate prohibited end use of the waste treated seed, not the parameters of the agreement by which the waste treated seed came to be in the possession of a handler intending or attempting to reuse the waste treated seed for the prohibited end use. However, the MPCA’s experience has historically been that some parties may have a mistaken belief that a transaction prohibited to prevent an ultimate harm is exempted or forgiven if no money or other value changes hands during the transaction. Therefore, the MPCA explicitly includes donation as well as sale of waste treated seed for prohibited reuses as a disallowed act, to head off this potential misunderstanding.

In part 7035.3700 Waste Treated Seed, Items D and E ~~uses~~ the undefined terms “food” and “feed.” The term “food” is used extensively and consistently throughout the Minnesota Statutes to mean nutritive material eaten by humans. Similarly, “feed” consistently is used throughout the Minnesota Statutes to mean nutritive material given to animals, including livestock, poultry, domestic pets, and wildlife. The MPCA believes that “food” is common enough that nearly all readers will readily understand its meaning, but “feed” could potentially be misconstrued to mean feed either for only one category of animal, or readers might easily not automatically consider all potential uses of “feed,” and might therefore misinterpret that use of waste treated seed for wildlife, for example, was not banned. It is reasonable to attempt to ensure readers understand the intended application of the ban by including the examples of livestock, poultry, and wildlife.

Finally, the MPCA applies the restrictions addressed in Item B regarding burning waste treated seed for disposal or energy recovery to the concept of using waste treated seed directly for fuel. The restriction in Item B explicitly addressed only the first-person burning of waste treated seed, but would not prohibit sale or other transfer of waste treated seed to another person, even if that person intended to burn it for disposal or energy recovery, effectively as fuel. The MPCA notes that this loophole could result in a person who was aware of and understood the applicable burning prohibitions remaining compliant

while still passing along waste treated seed, possible to an unknowing, innocent Minnesota citizen or business. It is reasonable to ensure that innocent third parties are not exposed to contact with or emissions from burning of waste treated seed.

Justification for Minn. R. 7035.3700, Subp. 5

As discussed in the justification for Subp. 4, Item D, instructions on treated seed container labels are considered effectively only “right to know” and not as enforceable requirements or prohibitions under long-standing USDA and EPA interpretation of existing federal law. Indeed, some treated seed labels even explicitly title the directions as “...Hazard Communication Data...,” a phrase typically used under the U.S. Occupational Safety & Health Administration’s (OSHA) Hazard Communication Standard which has as its paradigm the employee’s “Right To Know” about risks. These interpretations were reaffirmed as recently as October of 2023, and the MPCA does not expect they will change absent changes in federal statute or regulation that explicitly render the directions as mandatory, enforceable requirements. While the EPA is in the very early information-gathering stages of potential future regulatory changes that could affect the enforceability of treated seed label directions, actual regulatory changes are neither ultimately guaranteed nor expected in the next several years.

In addition, these label directions are prepared by pesticide manufacturers from the perspective of protection of agricultural production and the effectiveness of use of their product treated seed. Proposed labels are reviewed and approved by the EPA, but crucially only by the EPA FIFRA program, not by the EPA RCRA program nor delegated state RCRA programs with knowledge and experience in waste risk identification and management. The EPA’s FIFRA program, while knowledgeable and experienced in considerations for pesticide use and application from an agronomic perspective and public exposure risks arising from pesticide use and application, is not knowledgeable nor experienced in waste management practices nor risk identification and management arising from waste management. Even regarding pesticides directly, the EPA FIFRA program does not regulate risk identification and management of pesticide wastes, including waste pesticides themselves, containers, or packaging. Federally, this regulation is the purview of the EPA RCRA program. Further, because the majority of environmental and human health impacts from waste management are relatively local, the RCRA program is substantively delegated to the states, which are considered to have the most knowledge regarding local waste management resources, risks, and best management.

As a result, treated seed label directions have previously, and may in many instances still, include statements that are functionally incomplete or that can easily be misread to potentially conflict with existing Minnesota requirements and restrictions regarding waste management, including those clarified and restated in this rulemaking. Phrases such as: “...incorporate any remaining seed in the soil to prevent feeding by wildlife...”, or “...If treated seed is spilled outdoors or in areas accessible to birds, promptly clean up or bury to prevent ingestion. Dispose of all excess treated seed. ...” with no other direction; or “...Dispose of all excess treated seed by burying seed away from bodies of water....” Again, presented alone, the instructions appear to allow or even direct simple burial for disposal with only vague limits, with no explanation or reference of the existing Minnesota requirements and restrictions that apply to solid wastes, including waste treated seed.

Even when treated seed label directions do contain more guidance or a reference, it may be of little actual help, such as “...Dispose of all excess treated seed. Do not contaminate bodies of water when disposing of excess treated seed or wash waters of planting equipment. Dispose of them in accordance with local requirements....” While this statement is technically correct, it is left to the reader’s imagination what method of disposal might not contaminate water.

Unless the EPA may at some time in the future render compliance with treated seed label directions as compulsory and enforceable, and simultaneously both requires a printed direction that any local

requirements control and a mandate that waste treated seed generators actively determine what those local requirements are, it is critically necessary and reasonable for the MPCA to specify and explicitly clarify those requirements.

Justification for Minn. R. 7035.3700, Subp. 6

As Minn. R. of this rulemaking, the MPCA is explicitly required by the Legislature to, in rule “...clearly identify the regulatory jurisdiction of state agencies and local governments...” with regard to waste treated seed management. It is necessary and reasonable to promulgate rules identifying the regulatory jurisdictions as directed by the Legislature.

Justification for Minn. R. 7035.3700, Subp. 6, Item A

The Legislature authorized the MPCA to adopt rules for the safe and lawful disposal of waste treated seed. While the MPCA was directed to consult with the MDA and the University of Minnesota, an executive agency is considered to be the primary implementation and enforcement agency of the rules it promulgates unless explicitly otherwise specified. Additionally, the MPCA has previously been charged by the Legislature under the statutes cited in section 3 of this SONAR, Statutory Authority, with responsibility for statewide oversight of management of solid waste. As determined under already existing statutes and rules, and as clarified under these proposed rules, waste treated seed is solid waste. Implementing and enforcing the provisions of these proposed rules will not contradict or hinder any other existing rules promulgated by the MPCA nor conflict with any existing statutes. These proposed rules are being placed within Chapter 7035, a chapter of rules which the MPCA has jurisdiction to implement and enforce completely. It is reasonable for the MPCA to affirm its jurisdiction over all of the proposed provisions.

Justification for Minn. R. 7035.3700, Subp. 6, Item B

The MDA has previously been charged by the Legislature under Minnesota Statutes § 18B.03 and 21.85 with responsibility for statewide oversight of registration and use of the pesticides used to treat seed and with the specifications and labeling of treated seed. Treatment of seed with a registered pesticide is considered to be the ultimate intended use of that pesticide; under current USDA and EPA interpretation of federal statutes and regulations related to pesticides, and MDA interpretation of Minnesota statutes and rules related to pesticides, seed treated with a pesticide is considered a treated article, similar to treated wood or treated soil, not itself a pesticide subject to direct EPA or MDA regulation. However, requirements for treated seed labels are considered an extension of the labeling requirements for the pesticides used to treat them. Statutes 18B and 21 provide for MDA regulation of pesticides and pesticide labeling, including treated seed labeling.

Justification for Minn. R. 7035.3700, Subp. 6, Items C and D

Local units of government have two effective fields of regulation regarding waste treated seeds. First, Chapter 1505 allows for partial delegation of certain MDA responsibilities to local units of government who enter into individual delegation agreements with the MDA. The scope of regulation of each local unit of government is negotiated with MDA and then specified in their respective delegation agreement. Second, all local units of government in Minnesota have both regulatory authority over solid waste as it relates to land use and zoning, areas of regulation primarily regulated by local units of government, as well as over solid waste management under ordinances under the authority of statutes 115A, 400, and 473.

7) Minn. R. 7045.0020

Justification for Minn. R. 7035.0300, Subp. 58c

A new definition of “monitoring well” is added to maintain consistency with the corrected term in Chapter 7035 and to improve clarity and certainty in this chapter. The term “monitoring well” is used 33

times in this chapter but has not previously been defined. Altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to maintain the same meaning clarified in Chapter 7035. No change in the meaning of this term in any use in this chapter is intended or expected by this addition. It is reasonable and necessary to maintain consistency where possible between terminology in Chapters 7035 and 7045, to the significant overlap in regulation and waste management between the solid waste and hazardous waste programs. [See proposed Minn. R. 7035.0300, Subp. 66]

Justification for Minn. R. 7045.0020, Subp. 83

The definition of this term is revised to concord with the clear definition added to Chapter 7035 in Minn. R. 7035.0300, Subp. 98a. This term is used once in Chapter 7045, for the same purpose as used in Chapters 7035. The current statutory reference for the definition of this term in Chapter 7045 is the basis for the rule to which the Chapter 7035 uses all currently refer. Because of the close relationship between the solid waste and hazardous waste rules and regulatory programs in Minnesota, the MPCA has observed that comprehension and utility for regulated parties and regulators alike are improved when these Chapters can share identical definitions for like terms. No change to the effective meaning to the single use of this term in this chapter will result from this change, however potential confusion about whether the intended meanings of the term in either of the associated chapters will be removed. Therefore, it is reasonable and necessary to revise the definition of this term in this chapter. [See Minn. R. 7035.0300, Subp. 98a; Minn. Stat. § 103F.205, Subd. 4; Minn. Stat. § 105.485, Subd. 2, renumbered by 1990 Session Law, Ch. 391, Art. 10, Sec. 4]

Justification for Minn. R. 7045.0020, Subp. 88a

A new definition for “surface water” and “surface waters” is added to this chapter. These terms are used 100 times in this Chapter currently, but have not previously been explicitly defined. Examined in context, each of these uses is consistent with the MPCA’s own general definition found in Chapter 7050. Reliance by the MPCA on this general definition is consistent across many MPCA regulatory programs. Explicitly defining “surface water” and “surface waters” to have the meaning in Minn. R. 7050.0130, Subp. 6, will not change the intended meaning any existing use of the terms in this Chapter, but will improve clarity and provide certainty of the intended meaning to these uses as well as to the newly proposed use. In addition, it is reasonable to maintain parity and consistency in terminology and term definitions in the regulation of hazardous waste similarly to the regulation of solid waste wherever possible, due to the close relationship between these programs and overlapping regulation and oversight provided them by the MPCA. A new definition of these terms is proposed for addition to Chapter 7035. Therefore, it is reasonable and necessary to adopt this definition.

Justification for Minn. R. 7045.0020, Subp. 96b

A new cross-reference to the detailed definition of treated seed in Chapter 7035 is added. The Hazardous Waste Rules in Chapter 7045 do not currently include a definition of treated seed. Adding this definition is necessary to clarify the meaning of treated seed in the conditional exemption for waste treated seeds from hazardous waste regulation to be effected in 7045.0120, Subp. 2. It is reasonable to ensure that both Minnesota rule chapters apply the same definition of treated seed to prevent confusion by regulated parties.

Justification for Minn. R. 7045.0020, Subp. 102d

A new cross-reference to the detailed definition of waste treated seed in Chapter 7035 is added. The Hazardous Waste Rules in Chapter 7045 do not currently include a definition of waste treated seed. Adding this definition is necessary to accurately reference this waste stream in the conditional exemption for waste treated seeds from hazardous waste regulation to be effected in 7045.0120, Subp.

2. It is reasonable to ensure that both chapters apply the same definition of waste treated seed to prevent confusion by regulated parties.

Justification for Minn. R. 7035.0300, Subp. 105a

A new definition of “water-supply well” is added to this chapter. This term is used three times in this chapter currently, but has not previously been explicitly defined. Currently this term is found in Minn. R. 7045.0590, Subp. 3; and Subp. 3, Item B. Examined in context, each of these uses is consistent with the MDH’s definition of this term in Chapter 4725, already referenced previously by other closely related definitions in this rulemaking for the same reasons. Explicitly defining “water-supply well” to have the meaning in Minn. R. 4725.0100, Subp. 50a, will not change the intended meaning of the three existing uses of the term in this chapter, but will improve clarity and understanding of the intended meaning to these uses as well as maintain consistency with Chapter 7035. Therefore, it is reasonable and necessary to adopt this definition.

8) Minn. R. 7045.0120

Justification for Minn. R. 7045.0120, Subp. 2, Item F

The conjunction at the end of this Item is removed and relocated to Item G to maintain correct grammar in the list of Items in the addition of new Item H.

Justification for Minn. R. 7045.0120, Subp. 2, Item G

A conjunction is relocated from Item F and added to the end of this Item to maintain correct grammar in the list of Items in the addition of new Item H.

Justification for Minn. R. 7045.0120, Subp. 2, Item H

A conditional exemption for waste treated seeds and discarded containers that held treated seed from the hazardous waste requirements is added for the same reasons discussed under Minn. R. 7035.3700, Subp. 2. It is necessary to add this exemption to this chapter because without it, generators of waste treated seed that did not cross-reference Chapter 7035 would automatically be required to individually evaluate their waste treated seed to determine if it is hazardous waste under this chapter. Though many businesses generate some amounts of both solid waste and hazardous waste, and thus are subject to both the solid waste Chapter 7035 and hazardous waste Chapter 7045, these chapters are most commonly read and applied separately, and the MPCA does not expect most readers considering hazardous waste requirements to by default also study the solid waste requirements nor vice versa. Including this explicit conditional exemption will make it clear to businesses and other readers what the actual regulatory requirements for waste treated seeds are and will help prevent inadvertent regulatory compliance duplication. It is reasonable to reduce confusion and the regulatory study burden on waste treated seed generators.

5. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131, which require state agencies to address a number of questions in the SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the MPCA’s response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The majority of persons affected by this rule will be persons dealing regularly with treated seed,

including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers. Because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions, the MPCA does not expect the proposed rule to significantly increase costs or regulatory burdens. Because this proposed rule is intended to improve clarity and understanding of proper management of waste treated seed across the state, reducing the risk of harm to human health and the environment from mismanagement of waste treated seed, the MPCA expects that all Minnesota citizens will benefit from the proposed rule.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

In general, the MPCA does not anticipate that any of the proposed amendments will have any direct effect on State revenue other than the overall value of maintaining rules that are accurate and up to date and that reflect current requirements. The MPCA also does not anticipate additional costs to the MPCA or other state agencies to implement or enforce the proposed amendments.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Because the proposed rule is intended to primarily bring together and clarify already-existing requirements, the MPCA considers it the least costly method to achieve the purpose mandated by the Legislature. Additionally, because this is an explicitly mandated rulemaking, the MPCA must accept that the Legislature has already considered this question and has determined that rulemaking is most appropriate.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The MPCA reviewed existing requirements and collated, presented, and explained them in MPCA fact sheet #w-hw4-51 in April of 2022. The Legislature enacted the mandate for this rulemaking in May of 2023. The MPCA has therefore concluded that the Agency's originally implemented alternative method for achieving the purpose of the proposed rule was considered insufficient by the Legislature. Because the Legislature has mandated this rulemaking, the Agency must reject additional alternative methods.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The majority of persons affected by this rule will be persons dealing regularly with treated seed, including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers. Because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions, the MPCA does not expect the proposed rule to significantly increase costs.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The Legislature has mandated this rulemaking. The cost or consequences of not adopting the proposed rule would thus be at the discretion of the Legislature to achieve its intended purpose. Regardless, the costs of not adopting the proposed rule would not be expected to significantly change because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions. Not adopting the rule would result in failing to comply with the legislature's mandate.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

While the EPA has recently requested comment from the public on potential future changes in federal regulation of treated seed, including possible management of waste treated seed, at the time of this rulemaking there are currently no enforceable federal regulations directly applicable to management of waste treated seed, as stated by the EPA in 2023. The MPCA is aware of federal regulations of the EPA and U.S. Department of Agriculture that regulate some aspects of treated seed handling, including manufacture and proper intended use, however these standards do not directly regulate disposal of waste treated seed.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as *“the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”*

The proposed amendments for the most part bring together and clarify existing state rule and statutory requirements. Therefore, the proposed amendments are not expected to have significant cumulative effect.

6. Environmental Justice

MPCA publication #p-gen5-05, May, 2022, available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf>, describes the MPCA’s vision, strategies, and implementation for integrating environmental justice principles into the Agency’s work.

The MPCA operates under a policy for environmental justice that closely mirrors the EPA policy. The MPCA’s policy states:

The Minnesota Pollution Control Agency expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.

When undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development. This review of the impacts and meaningful involvement are provided in this SONAR, though these analyses are not required under the Administrative Procedures Act (Minn. Stat. ch. 14).

A. Equity Analysis

To implement the “fair treatment” aspect of the EJ Framework policy, the MPCA would generally complete an equity analysis considering and documenting how the proposed rule may affect low-income populations and communities of color. The MPCA does not expect the proposed rules to have any negative environmental consequences; as stated previously, the intent of the rules is to compile and clarify already-existing regulatory requirements.

B. Meaningful Involvement

In order to meet the directive to strive for “meaningful involvement,” the MPCA works to seek out and facilitate the involvement of those potentially affected by the proposed rule, particularly those populations that have historically not been as engaged in the public process. Because the proposed revisions compile and clarify already-existing regulatory requirements, the MPCA does not expect the proposed rules to have any negative environmental consequences. The proposed rules will apply statewide, with no particular effect on any community over another. Thus, no additional outreach is necessary.

As described in Section 2 of the SONAR, Public participation and stakeholder involvement, there has been stakeholder involvement during the development of the proposed rules. While there was no specific plan developed to reach out to low-income populations and communities of color, we believe our stakeholder outreach has ensured that most affected communities are aware of the rule. Additionally, during the formal public comment period, all interested and affected parties may submit comments on the proposed rulemaking.

7. Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The MPCA utilizes a self-subscription service for interested and affected to register to receive rule related notices. Request for US Mail service is available. Rule projects are listed on the Agency’s Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription list for that specific rule is established and an electronic notice is sent to individuals who have self-subscribed to receive notice for all rulemakings. The Agency also purchases the League of Minnesota Cities’ email address list to reach out to new government officials that may not be familiar with the electronic delivery system used by the MPCA to send rule notices, public notices and other information. Examples of the government officials are: MN Cities, County Chairs, Zoning and Planning, Commissioners and Solid Waste Officers. An electronic message is sent inviting individuals to subscribe to topics that interest them. The MPCA sent an electronic message to the government officials on March 4, 2024.

A. Notice:

On August 28, 2023, the MPCA published notice requesting comments on planned rule amendments to Minnesota Rules Chapter 7035, and on December 26, 2023, the MPCA published an additional notice requesting comments on additional planned rule amendments in Minnesota Rules Chapters 7035 and 7045.

The notices were placed on the MPCA’s Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments> and the Waste Treated Seed rule webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seed>.

- 1) Minn. Stat. § 14.14, subd. 1a. On the date the Dual Notice is published in the State Register, the MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings. Parties within this group that have requested non-electronic notice will receive copies of the Dual Notice and the proposed rule amendments in hard copy via U.S. Mail.

- 2) Minn. Stat. § 14.116. The MPCA intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This applies because a bill was authored within the past two years granting rulemaking authority.
- 3) Minn. Stat. §14.111. If the rule affects agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the State Register. The Commissioner of Agriculture will be notified of potential rule changes. As requested, the rule changes will be submitted via email with a cover letter notifying the Commissioner of Agriculture of the changes. The following individuals will receive the information:

- Thom Petersen, Commissioner
- Doug Spanier, General Counsel

The Agency would also like to note that it worked in consultation with MDA and UofM Extension staff, as mandated, in the development of the preliminary draft rule. The following is a list of MDA and UofM Extension staff involved in consultation for this rule:

- Jane Boerboom, Pesticide and Fertilizer Mgmt. (MDA)
 - Rajinder Mann, Pesticide and Fertilizer Mgmt. (MDA)
 - Theresa Cira, Pesticide and Fertilizer Mgmt. (MDA)
 - Michael Merriman, Plant Protection (MDA)
 - Jolene Warnke, Pesticide Safety Environmental Education (PSEE) Program Mgr. (UofM Extension)
 - Tana Haugen-Brown, Educator & Co-Coordinator, PSEE (UofM Extension)
 - Linda Johns, Associate Director & Coordinator, PSEE (UofM Extension)
- 4) Minn. Stat. § 115.44, subd. 7. Under Minn. Stat. § 115.44, subd. 7, the MPCA is required to send notice to the governing body of each municipality touching the waters for which standards (authorized under Minn. Stat. § 115.44) are sought to be adopted. The proposed amendments do not involve standards authorized under Minn. Stat. § 115.44.
- 5) Minn. Stat. § 116.07, subd. 7(j). Under Minn. Stat. § 116.07, subd. 7(i), the MPCA is required to send notice to the members of legislative policy and finance committees with jurisdiction over agriculture and the environment before final adoption of any new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7. The proposed amendments do not involve new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7.

In addition, a copy of the Notice, proposed rule amendments and SONAR will be posted on the MPCA's MPCA's Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments>.

B. Additional notice:

The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to:

- 1) Association of MN Counties; Brian Martinson, Environment & Natural Resources;
- 2) Association of Metropolitan Municipalities; Michael Lund, Government Relations Specialist;
- 3) League of MN Cities; Craig Johnson, Intergovernmental Relations Representative;
- 4) MN Association of Townships; Jeff Krueger, Executive Director;
- 5) MN City/County Management Association; Richard Fursman, President;
- 6) MN Center for Environmental Advocacy; Kathryn Hoffman, Chief Executive Officer;
- 7) Izaak Walton League of America, MN Division; John Rust, Executive Committee President;
- 8) MN Chamber of Commerce; Tony Kwilas, Director Environmental Policy;
- 9) MN Resource Recovery Association; Chris McConn, Executive Director;
- 10) National Waste & Recycling Association (NWRA), Amber Backhaus, Vice President of Government Affairs; Bill Keegan, President;
- 11) Solid Waste Association of North America – MN Chapter (SWANA); Matthew Evans;
- 12) MN Solid Waste Administrators Association (SWAA); Rebecca Rice, Executive Director;
- 13) MN Waste Wise; Doug Loon, President and CEO, MN Chamber of Commerce;
- 14) Recycling Association of MN (RAM); Paul Gardner, Board Chair;
- 15) Solid Waste Permitting GovDelivery List. The MPCA established the Solid Waste Permitting GovDelivery list to distribute notifications and updates for owners and operators of solid waste management facilities. The MPCA created the list using the most recent facility contact information (owners, operators, and land owners) stored in Tempo (Agency permitting software) for all facilities required to submit annual reports. To supplement the list, the MPCA invited consultants associated with the permitted facilities, via email, the option to sign up for the GovDelivery list. In addition, the Agency sent notifications to the RAM/SWANA, NWRA and SWAA organizations along with sign up information. As of May 3, 2021, this list contained approximately 733 subscribers (May 21).

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's webpage will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

8. Performance-based rules

Minnesota Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives.

The MPCA believes that the consideration of performance-based alternatives has already been conducted at the time the varying already-existing requirements were adopted. The proposed amendments are not making any fundamental changes to the regulatory systems that are governed by the existing rules. The intent of the proposed rules is to compile and clarify already-existing regulatory requirements, not to modify how prescriptive or flexible the rules are.

9. Consideration of economic factors

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subdivision 6 and Minn. Stat. § 115.43, subdivision 1 to give due consideration to:

...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The MPCA considered the required economic factors and determined that, because the proposed rules effectively collate and clarify already-existing requirements, the standards should not present a burden on any municipality. The MPCA does not anticipate that the proposed rules will significantly affect the establishment, maintenance, operation and expansion of business, commerce, trade, industry, or traffic. Therefore, under the circumstances no actions described in the above sections are warranted.

10. Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearings (OAH) at the hearing or with the documents it submits for Administrative Law Judge review.

11. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. Local units of government may choose to adopt or amend their local ordinances, but they are not required to do so as a result of the proposed amendments.

12. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

Because the proposed rules effectively collate and clarify already-existing requirements, the MPCA does not believe that small businesses or cities will face significant new costs in complying with the standards.

13. Differences with federal and other state standards

Minn. Stat. § 116.07, subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar

standards in states bordering Minnesota; and similar standards in states within the US Environmental Protection Agency (EPA) Region 5; and a specific analysis of the need and reasonableness of each difference.

Non-hazardous solid waste is regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA). Regulations established under Subtitle D ban open dumping of waste and set minimum federal criteria for the operation of municipal waste and industrial waste landfills, including design criteria, location restrictions, financial assurance, corrective action (cleanup), and closure requirement. Under existing standards in force in Minnesota, waste treated seed is an industrial solid waste and may be managed in municipal waste or industrial waste landfills. The rules proposed in this rulemaking comport with and do not alter the applicable federal requirements for municipal solid waste or industrial waste landfills.

This rule revision does not affect air quality or water quality standards promulgated by the federal government. As required, a review was conducted of solid waste and hazardous waste regulations from EPA Region 5 states and the states surrounding Minnesota. The states reviewed were: Wisconsin, Illinois, Indiana, Michigan, Ohio, Iowa, North Dakota, and South Dakota.

Table 2: Differences Amongst Specific States

State	Findings regarding specific waste treated seed standards
Wisconsin	General waste treated seed standard [ATCP 29.57(5)]. The standard generically requires disposal 'in a manner that does not pose a risk to persons, property, or the environment'. MPCA analysis: Equivalent to Minn. Stat. § 18B.075.
Illinois	No apparent specific waste treated seed standards.
Indiana	No apparent specific waste treated seed standards.
Michigan	No apparent specific waste treated seed standards.
Ohio	Specific waste treated seed standards [OAC Rule 901:5-11-11(D)(2)]. The standards require management as solid waste or hazardous waste, dependent on the evaluation of the waste. MPCA review indicates that waste treated seed would be evaluated as solid waste under the applicable Ohio state hazardous waste standards. MPCA analysis: Equivalent to proposed Minn. R. 7035.3700.
Iowa	No apparent specific waste treated seed standards. Guidance published jointly by Iowa Department of Natural Resources and Department of Agriculture at: https://iowaagriculture.gov/sites/default/files/pesticides/Updates/Treated%20Seed%20Disposal%207-8-2022.pdf https://www.iowadnr.gov/Portals/idnr/uploads/waste/swfact_treatedseeddisposal.pdf
North Dakota	No apparent specific waste treated seed standards.
South Dakota	No apparent specific waste treated seed standards currently, though the Department of Agriculture and Natural Resources has received explicit authorization to establish specific standards [SD Stat. 38-12A-20(18)]

14. Authors, witnesses and SONAR exhibits

A. Authors

- 1) Joshua Burman, Pollution Control Specialist, Senior, Industrial Division, MPCA. Mr. Burman is the Hazardous Waste Compliance & Enforcement Unit contact staff for regulatory citation and rule interpretation.

B. Witnesses and other staff

- 1) The MPCA expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the MPCA anticipates having the listed authors, current staff, testify as witnesses in support of the need for and reasonableness of the rules.
- 2) David Stellmach, MPCA. Mr. Stellmach is a staff attorney to the MPCA and will introduce the required jurisdictional documents into the record.
- 3) Daniel Gonzalez, MPCA. Mr. Gonzalez is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.

C. SONAR exhibits

- 1) S-1. MPCA Treated Seed fact sheet; December, 2023.
<https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>
- 2) S-2. MPCA Treated Seeds fact sheet; April, 2022.
- 3) S-3. MPCA Treated Seeds fact sheet; March, 2022.

15. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. Chs. 7035 and 7045. The MPCA has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.



Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

November 20, 2024

Date